

No. 1883

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**UNITED STATES CIRCUIT COURT OF APPEALS**  
FOR THE NINTH CIRCUIT.

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**TRANSCRIPT OF RECORD.**

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THE UNITED STATES OF AMERICA (Complainant),  
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),  
(Defendant), Appellee.

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**VOLUME XV.**

(Pages 5537 to 5727, Inclusive.)

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Upon Appeal from the United States Circuit Court  
for the District of Idaho, Central  
Division.

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**FILED**

SEP 19 1910



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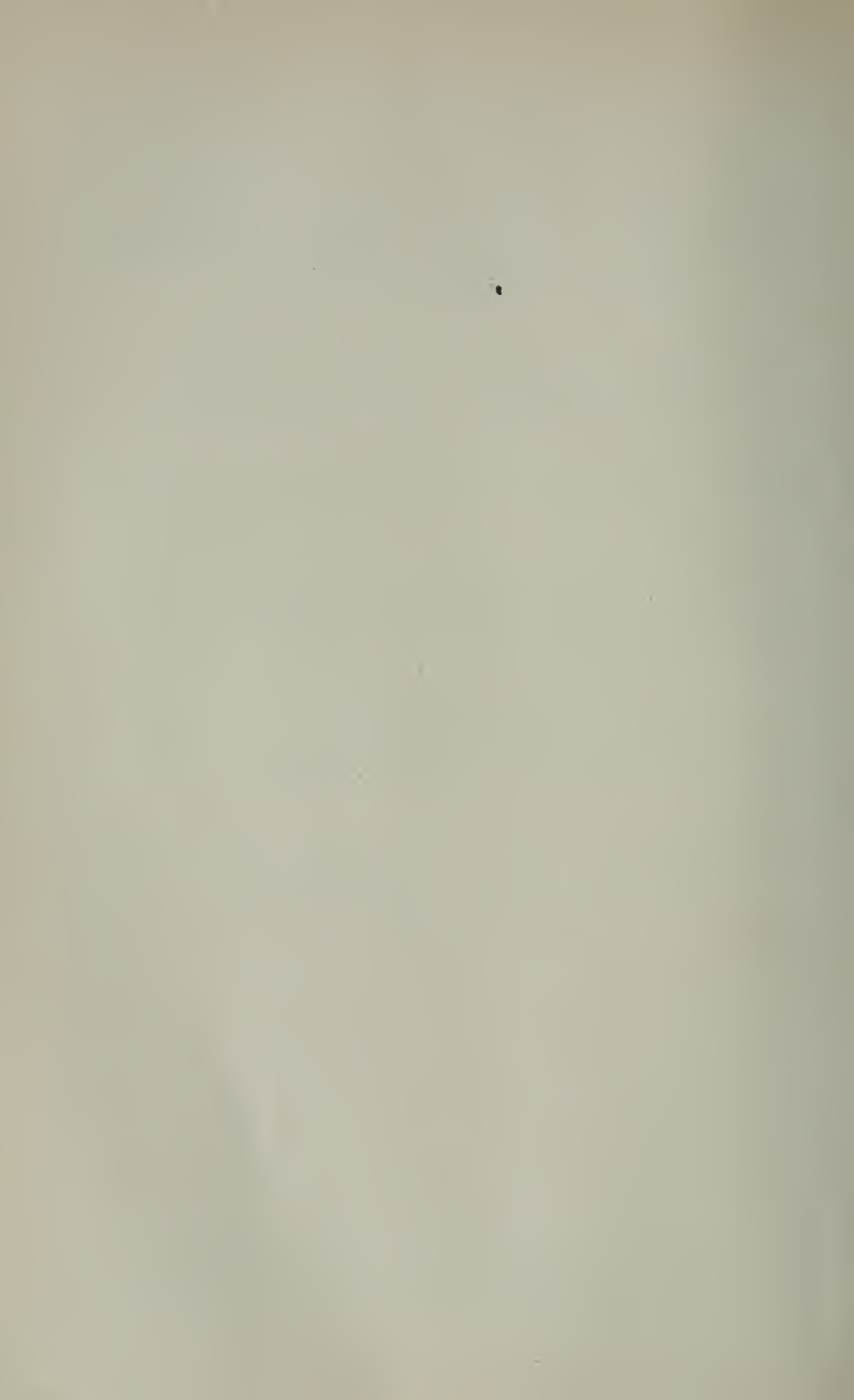
VOLUME XV.

(Pages 5537 to 5727, Inclusive.)

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Upon Appeal from the United States Circuit Court  
for the District of Idaho, Central  
Division.

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**Plaintiff's Exhibit No. 255.**

DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.

Boise, Idaho, March 6, 1902.

Lelia Lee, being first duly sworn, deposes and says that she is the identical Lelia Lee who made Timber and Stone Sworn Statement No. 294, at this office, December 19, 1901, for SE.  $\frac{1}{4}$ , Sec. 1, Tp. 7 N., R. 5 E.; that she is a married woman; that she purposes to purchase said land with her separate money in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

LELIA LEE.

Subscribed and sworn to before me this 6th day of March, 1902.

EDWARD E. GARRETT,

Receiver.

(Back)

Plaintiff's Exhibit No. 255. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 256.****UNITED STATES LAND OFFICE,**

Boise, Idaho, February 18, 1903.

Annie E. Kempner, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #668 at this office on the 17th day of October, 1902, and who advertised to offer proof on the 18th day of February, 1903, for the NE.  $\frac{1}{4}$  of Section 32, Tp. 7 N., R. 8 E., B. M.; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

**ANNIE E. KEMPNER.**

Subscribed and sworn to before me this 18th day of February, 1903.

**EDWARD E. GARRETT,**

Receiver.

(Back)

Plaintiff's Exhibit No. 256. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 257.**

**UNITED STATES LAND OFFICE,**

Boise, Idaho, January 27, 1903.

Elizabeth Willhite, being duly sworn deposes and says: That she is the identical person who made timber and stone sworn statement #626 in this office on September 24, 1902, for the NE.  $\frac{1}{4}$ , Sec. 31, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof therefor on the 27th day of January, 1903; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

**ELIZABETH WILLHITE.**

Subscribed and sworn to before me this 27th day of January, 1903.

**EDWARD E. GARRETT,**  
Receiver.

(Back)

Plaintiff's Exhibit No. 257. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 258.****DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.**

Boise, Idaho, January 29, 1902.

Louisa B. West, being first duly sworn, deposes and says that she is the identical Louisa B. West who made Timber and Stone Sworn Statement No. 262, at this office, November 1, 1901, for NW.  $\frac{1}{4}$ , Sec. 23, Tp. 7 N., R. 5 E.; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

LOUISA B. WEST.

Subscribed and sworn to before me this 29th day of January, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 259.**  
DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE,

Boise, Idaho, July 28, 1902.

Evelyn O'Farrell, being first duly sworn, deposes and says: That she is the identical person who made timber filing under Act of June 3, 1878, for S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Section 26, N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Section 36, Township 7 North, Range 5 E., proof of which she offered February 26, 1902; that since offering such she has not sold, assigned, or in any manner alienated or agreed to alienate her right, title, or claim in or to said land, or the timber thereon.

EVELYN O'FARRELL.

Subscribed and sworn to before me 1st day of Aug., 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 260.**  
UNITED STATES LAND OFFICE,

Boise, Idaho, September 20, 1904.

Beulah B. Lake, being first duly sworn, deposes and says:

That she is the identical person who filed timber and stone sworn statement No. 1343, on June 8, 1904, at this office, for the purchase of the NE.  $\frac{1}{4}$ ,

Sec. 8, T. 6 N., R. 4 E., B. M., and who advertised to offer proof therefor on the 14th day of September, 1904; that the reason she did not offer proof on said 14th day of September, 1904, or until this date, was because the money did not arrive from Wisconsin until this date; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

BEULAH B. LAKE.

Subscribed and sworn to before me this 20th day of September, 1904.

EDWARD E. GARRETT,  
Receiver.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 261.**

**AFFIDAVIT.**

Garden City, Minnesota, April 28, 1902.

I, Frank B. Nickerson, of Garden City, Minnesota, do solemnly swear that I have not sold, assigned, or in any manner alienated, or agreed to alienate my right, title or claim in or to the land filed on by me



and entered in the Boise, Idaho, Land Office, under Timber and Stone Sworn Statement No. 241, made at that office on October 19th, 1901, for E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Lot 1, Sec. 30, Tp. 7 North, R. 5 E., proof for which I offered January 7, 1902, since offering the said proof or at all.

FRANK B. NICKERSON.

Subscribed and sworn to before me this 28 day of April, 1902.

[Notarial Seal] GARRETT MURPHY,  
Notary Public for Blue Earth County, Minnesota.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 262.**

IN THE UNITED STATES LAND OFFICE,  
At Boise, Idaho.

State of Idaho,  
County of Ada,—ss.

Charles Nelson of lawful age being first duly sworn on his oath, deposes and says:

That he is the identical person who on the 28 day of January, A. D. 1902, made final proof upon and tendered payment under his Timber and Stone Sworn Statement No. 260 at the U. S. Land Office at Boise, Idaho, for the NE.  $\frac{1}{4}$  of Sec. 23, Twp. 7 N. of R. 5 E., B. M.

That he has not since making said proof or at any time sold or assigned or agreed to sell or assign his interest in said premises or the timber thereon, or

any part thereof, to any person or persons, corporation or association of persons.

That he has not directly or indirectly alienated or agreed to alienate his right, title or interest in said land or the timber thereon since making said proof or at all.

CHAS. NELSON.

Subscribed and sworn to before me this 5 day of August, A. D. 1902.

[Notarial Seal]

L. M. PRITCHARD,

Notary Public.

(Back)

Plaintiff's Exhibit No. 262. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 263.**

DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE, AT BOISE,  
IDAHO.

June 18th, 1904.

In the Matter of the Application of JOHN I. WELLS to Enter Under His Timber and Stone Sworn Statement No. 219, the NW.  $\frac{1}{4}$ , Sec. 14, T. 7 N., R. 5 E., B. M.

John I. Wells of lawful age being first duly sworn on his oath, deposes and says:

That he is the identical John I. Wells who made timber and stone sworn statement No. 219 for the NW.  $\frac{1}{4}$ , Sec. 14, Twp. 7 N., R. 5 E., B. M. Dated December 12, 1901, at the United States Land Office at Boise, Idaho.

That he has not since offering his final proof for



said land sold, assigned, transferred or alienated his right title or interest in said land or in the timber thereon, or any part or parcel thereof or thereon, nor has he agreed with any person or persons, company or corporation, directly or indirectly, to sell, transfer, assign or alienate his interest in said land or any part thereof, or the timber thereon or any part thereof, on any interest whatever therein, to any such person or persons, company or corporation, but says he now claims and holds the same for his own exclusive use and benefit.

JOHN I. WELLS.

Subscribed and sworn to before me this 18 day of June, A. D. 1904.

EDWARD E. GARRETT,  
Receiver.

Plaintiff's Exhibit No. 263. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 264.**

IN THE UNITED STATES LAND OFFICE,  
AT BOISE, IDAHO.

June 13, 1902.

George H. Ensworth being first duly sworn on his oath deposes and says:

That he is the identical person, who on the 11 day of June A. D. 1902 in the Land Office at Boise, Idaho, made final proof for T. & S. S. S. No. 329 for the E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  NE. quarter of Section No. 19 in Township No. 6 N. of Range 6 E. B. M. in Boise County, Idaho.

That since offering said proof on said date he has not sold, assigned, transferred or mortgaged or in any manner alienated his claim, or title to said tract of land or any part thereof or the timber thereon and that he has not agreed to sell, assign, transfer or mortgage his right, title or interest in said land or the timber thereon or any part thereof.

GEORGE H. ENSWORTH.

Subscribed and sworn to before me this 13 day of June, A. D. 1902.

[Notarial Seal]

L. M. PRITCHARD,

Notary Public.

(Back)

Plaintiff's Exhibit No. 264. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 265.**

IN THE UNITED STATES LAND OFFICE.

At Boise, Idaho.

State of Idaho,

County of Ada,—ss.

John C. Monroe of lawful age being first duly sworn on his oath deposes and says:

That he is the identical person who, on the 21st day of March A. D. 1902, made final proof upon and tendered payment under his timber and stone sworn statement No. 315 at the United States Land Office at Boise, Idaho, for the NE.  $\frac{1}{4}$  Sec. 25, Twp. 7 N., R. 5 E.

That he has not since making said proof or at any time sold or assigned or agreed to sell or assign the

interest in said premises or the timber thereon or any part thereof to any person, corporation or association of persons.

That he has not directly or indirectly alienated or agreed to alienate his right title or interest in said land or the timber thereon since making said proof or at all.

JOHN C. MONROE.

Subscribed and sworn to before me this 23 day of July, A. D. 1902.

L. M. PRITCHARD,  
Notary Public.

(Back)

Plaintiff's Exhibit No. 265. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 266.**

DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.

Boise, Idaho, April 7, 1902.

Mary A. Monroe, being first duly sworn, deposes and says that she is the identical Mary A. Monroe who made Timber and Stone Sworn Statement No. 317, at this office January 7, 1902, for SE.  $\frac{1}{4}$  Sec. 24, Tp. 7 N., R. 5 E; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or

any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

Mrs. MARY A. MONROE.

Subscribed and sworn to before me this 7th day of April, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 267.**

IN THE UNITED STATES LAND OFFICE,

Boise, Idaho.

State of Oregon,  
County of Marion,—ss.

Henry T. Benedict being first duly sworn, on his oath deposes and says:

That he is the identical person who on the 13 day of February, A. D. 1902, made final proof upon and tendered payment for timber and stone sworn statement No. 277 at the United States land office at Boise, Idaho, for the S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$  & N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$  Sec. 5 T. 7 N., R. 5 E.

That he has not since making said proof or at any time sold or assigned or agreed to sell or assign his interest in said premises, or the timber thereon to any person or persons, corporation or association of persons.

That he has not directly or indirectly alienated or

agreed to alienate his right, title or interest in said land or the timber thereon since making said proof or at all to any person or in any manner.

HENRY F. BENEDIX.

Subscribed and sworn to before me this 17th day of July A. D. 1902.

[Notarial Seal]

F. W. WATERS,  
Notary Public for Oregon.

(Back)

Plaintiff's Exhibit No. 267. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 268.**

United States Land Office.

Boise City, Idaho.

State of Idaho,  
County of Ada,—ss.

Arthur E. Brookhart, being first duly sworn deposes and says; that he is a citizen of the United States and the identical person who made a timber filing (under Act of June 3d, 1878), for S. W.  $\frac{1}{4}$  of Section 35, Township 7 north of range 5 east, and for which he offered proof on the 8th day of April, 1902; that he has not since offering said proof, or at any time, or at all, sold, assigned or in any manner alienated or agreed to alienate his right, title or claim in or to said land or the timber thereon.

ARTHUR E. BROOKHART.

Subscribed and sworn to before me, this 26 day of August, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

Plaintiff's Exhibit No. 268. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 269.**

State of Idaho,  
County of Boise,—ss.

Thaddeus M. Glass being first duly sworn deposes and says, that on December 13th, A. D. 1901, he made proof in matter of his timber filing (under act of June 3d, 1878) for the NE.  $\frac{1}{4}$ , Section 13, Township 7, Range 5 E.:—that he has not sold, assigned or in any manner alienated or agreed to alienate, his right, title or claim in or to said timber claim or at all; and further deponent sayeth not.

Subscribed and sworn to before me this 28 day of July, A. D. 1902.

[Notarial Seal]      NORMAN H. YOUNG,  
Notary Public.

(Back)

Plaintiff's Exhibit No. 269. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.



**Plaintiff's Exhibit No. 270.**

**UNITED STATES LAND OFFICE.**

Boise, Idaho, February 16, 1903.

Elizabeth Schmelzel, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #651 at this office on October 3d, 1902, for the purchase of the SE.  $\frac{1}{4}$  Sec. 27, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof on the 11th day of February, 1903; that the reason she did not offer proof on said 11th day of February was because she did not have the money on said date, the money coming from a sale of real estate; and the money was not received from such sale until this date; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

Mrs. ELIZABETH SCHMELZEL.

Subscribed and sworn to before me this 16th day of February, 1903.

HARRY J. SYMS,  
Register.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 271.****UNITED STATES LAND OFFICE.**

Boise, Idaho, Dec. 23, 1903.

Josie M. Ross, being first duly sworn, deposes and says that she is the identical person who made timber and stone sworn statement No. 1056, Sept. 14, 1903, for the purchase of the SW.  $\frac{1}{4}$ , Sec. 20, T. 6 N., R. 4 E., that she proposes to purchase said land with her separate money in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made any entry under this act or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

JOSIE M. ROSS.

Subscribed and sworn to before me this 23rd day  
of December, 1903.

HARRY J. SYMS,  
Register.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.



**Plaintiff's Exhibit No. 272.**

IN THE UNITED STATES LAND OFFICE.

Boise, Idaho.

State of Oregon,  
County of Marion,—ss.

Charles A. Walker, being first duly sworn on his oath deposes and says:

That he is the identical person who on this 20th day of February, A. D. 1902, made final proof upon and tendered payment for timber and stone, sworn statement No. 286 at the United States land office at Boise, Idaho, for the N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 8, Tp. 7 N., R. 5 E.

That he has not since making said proof or at any time sold or assigned to sell or assign his interest in said premises, or the timber thereon to any person or persons, corporation or association of persons.

That he has not directly or indirectly alienated or agreed to alienate his right, title or interest in said land or the timber thereon since making said proof or at all to any person or in any manner.

CHARLES A. WALKER.

Subscribed and sworn to, before me this 11th day of July, A. D. 1902.

[Notarial Seal]

P. Q. HEALY,

Notary Public for Oregon.

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 273.****DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.**

State of Idaho,  
County of Ada,—ss.

Uriah F. McBirney, being first duly sworn upon his oath deposes and says: That this affiant is the identical person who filed on the Southeast Quarter (SE.  $\frac{1}{4}$ ) of Section eleven (11), Township Seven (7) North, Range five (5) East, under the Act of June 3, 1878, and proof for which was offered on March 13th, 1902; that this affiant has not at any time or in any manner sold or assigned, or in any manner alienated or agreed to alienate or sell or assign any right, title or claim of this affiant in or to said land or any part thereof, or the timber thereon or any part thereof, since offering the said proof, or at any other time or at all.

URIAH F. MCBIRNEY.

Subscribed and sworn to before me this 1st day of August, 1902.

[Notarial Seal] IRWIN P. MARCELLAS,  
Notary Public.

(Back)

Plaintiff's Exhibit No. 273. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 274.**

**AFFIDAVIT.**

State of Idaho,  
County of Ada,—ss.

Susan N. Arbuckle, of lawful age, being first duly sworn according to law, deposes and says:

That she is the identical person who on May 3, 1902, filed her application at the U. S. Land Office at Boise, Idaho, under the Act of June 3, 1878, for S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$  Sec. 19, T. 7 N., R. 5 E. and who now offers proof in support of said claim.

She further deposes and says: That she is a married woman and purposes to purchase said tract with her own money, in which her husband has no interest or claim, the same having been a present to her from her husband about May 1, 1902. Said entry is made for her own separate use and benefit; that she has made no contract or agreement whereby any interest therein will inure to the benefit of her husband or any other person, and that she has never made any entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

**SUSAN N. ARBUCKLE.**

Subscribed and sworn to before me this 24th day of July, 1902.

**JAMES KING,**  
Register.

(Back)

47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 275.**

**UNITED STATES LAND OFFICE.**

Boise, Idaho, January 28, 1903.

Mrs. Emma Bilderback, being first duly sworn,  
deposes and says:

That she is the identical person who made timber and stone sworn statement #624 at this office on September 24, 1902, for the purchase of the N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  Sec. 27, and N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$  Sec. 28, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof on the 28th day of January, 1903; that she is a married woman; that she proposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

Mrs. EMMA BILDERBACK.

Subscribed and sworn to before me this 28th day  
of January, 1903.

EDWARD E. GARRETT,  
Receiver.

(Back)

Plaintiff's Exhibit No. 275. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 276.**

**UNITED STATES LAND OFFICE.**

Boise, Idaho, January 28, 1903.

Delilah Bayhouse, being first duly sworn, deposes and says:—

That she is the identical person who made timber and stone sworn statement #623 at this office on September 24, 1902, for the purchase of the NW.  $\frac{1}{4}$  of Sec. 27, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof therefor on the 28th day of January, 1903; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

**DELILAH BAYHOUSE.**

Subscribed and sworn to before me this 28th day of January, 1903.

**HARRY J. SYMS,**  
Register.

(Back)

Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 277.****UNITED STATES LAND OFFICE,**

Boise, Idaho, April 29, 1903.

Clifton C. Bliven, being first duly sworn, deposes and says:—

That he is the identical person who is applicant for Government title for the E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 24, T. 7 N., R. 7 E., B. M., under the timber and stone act, timber and stone sworn statement #794; that since offering final proof for said tract at this office on the 17th day of April, 1903, he has not sold, assigned or transferred his claim to said land, or has he directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which he may acquire from the government of the United States may inure in whole or in part to the benefit of any person except himself.

CLIFTON C. BLIVEN.

Subscribed and sworn to before me this 29th day of April, 1903.

EDWARD E. GARRETT,

Receiver.

(Back)

Plaintiff's Exhibit No. 277. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.



**Plaintiff's Exhibit No. 278.**

UNITED STATES LAND OFFICE,  
Boise, Idaho.

State of Idaho,  
County of Ada,—ss.

James O. Baker, being first duly sworn, deposes and says; That he is a citizen of the United States and the identical person who made a timber filing (under Act of June 3rd, 1878), for the SE.  $\frac{1}{4}$  of section 25, township 7, north of range 5 east, and for which he offered proof on the 20th. of March, 1902; that he has not since offering said proof, or at any time, or at all, sold, assigned or in any manner alienated or agreed to alienate his right, title or claim in or to said land or the timber thereon.

JAMES O. BAKER.

Subscribed and sworn to before me, this 2d day of July, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

Plaintiff's Exhibit No. 278. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. United States Court.

**Plaintiff's Exhibit No. 279.**

UNITED STATES LAND OFFICE.

Boise, Idaho, January 8, 1903.

Louisa E. Butler, being first duly sworn, deposes and says:

That she is the identical person whom made timber and stone sworn statement #581 at this office on

September 15, 1902, for the purchase of the N.  $\frac{1}{2}$  S.W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 4, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof therefor on this 8th day of January, 1903; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

LOUISA E. BUTLER.

Subscribed and sworn to before me this 8th day of January, 1903.

EDWARD E. GARRETT,

Receiver.

(Back)

Plaintiff's Exhibit No. 279. No. 47. Filed Jun. 15. 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 280.**

State of Idaho,  
County of Ada,—ss.

Harry L. Clyne, being first duly sworn according to law, deposes and says, that he is the identical Harry L. Clyne who made timber filing on the SE.  $\frac{1}{4}$  of Section 6, Township 7 North, Range 5 East, Boise Meridian; that he has not sold, or offered to sell said filing, or assigned, or in any manner alienated, or



offered to alienate, his right, title or claim, in or to said land, or the timber thereon, since offering said proof, or at all.

HARRY L. CLYNE.

Subscribed and sworn to before me this 16th day of August, 1902.

[Notarial Seal]

G. G. ADAMS,  
Notary Public.

(Back)

Plaintiff's Exhibit No. 280. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 281.**

M. Laeta Eagleson, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #1222, at this office on January 2, 1904, for the S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  and NW  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 8, T. 7 N., R. 5 E., B. M., and who advertised to offer proof therefor on the 17th day of March, 1903; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

M. LAETA EAGLESON.

Subscribed and sworn to before me this 17th day of March, 1904.

EDWARD E. GARRETT,  
Receiver.

(Back)

Plaintiff's Exhibit No. 281. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 282.**

State of Idaho,  
County of Ada,—ss.

I, Mack Gillum, being first duly sworn, deposes and says that he is the same person that on Mar. 18, 1902, made a timber and stone entry on the NE.  $\frac{1}{4}$  of Section 26, Township 8 North, Range 5 East. That he has not offered for sale, made any contract for sale or in any manner whatsoever alienated his right, title or interest or any portion thereof in and to said land or the timber thereon.

That he makes this affidavit in good faith fully realizing the purpose thereof.

MACK GILLUM.

Subscribed and sworn to before me this 29th day of July A. D. 1902.

[Notarial Seal]

JAMES S. BOGART,  
Notary Public.

Plaintiff's Exhibit No. 282. No. 47. Filed June 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 283.**

**UNITED STATES LAND OFFICE.**

Boise, Idaho, December 23, 1902.

Addie G. Gibberd, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement # 563 at this office on September 8, 1902, for the purchase of Lots 3 and 4, and S. 1/2 of NW. 1/4, Sec. 2, Tp. 7 N., R. 7 E., B. M., and who advertised to offer proof at this office therefor on this 23d day of December, 1902; that she is married; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

**ADDIE G. GIBBERD.**

Subscribed and sworn to before me this 23d day of December, 1902.

**EDWARD E. GARRETT,**  
Receiver.

(Back)

Plaintiff's Exhibit No. 293. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 284.**

United States Land Office, Boise, Idaho.

July 15, A. D. 1902.

Homer C. Granger, of Centerville, Boise County, State of Idaho, being first duly sworn, deposes and says, that he is the identical person who made Timber and Stone sworn statement No. 220, on September 20, A. D. 1901, for the Northeast Quarter of Section 14, in Township 7 North, of Range 5 East, and who, on December 12, A. D. 1901, offered final proof therefor; and that I have not sold, assigned or in any manner alienated or agreed to alienate my right, title or claim in or to said Entry No. 220 to said Northeast Quarter, of Section 14, in Township 7 North, of Range 5 East; since offering said proof or at all.

HOMER C. GRANGER.

Subscribed and sworn to before me this 15th day of July, A. D. 1902.

[Notarial Seal]

H. W. DUNTON,  
Notary Public.

(Back)

Plaintiff's Exhibit No. 284. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 285.**

IN THE UNITED STATES LAND OFFICE,  
At Boise, Idaho.

State of Idaho,  
County of Ada,—ss.

Walter L. Harrison, of lawful age, being first duly sworn on his oath deposes and says:

That he is the identical person who, on the 12 day of February, A. D. 1902, made final proof upon and tendered payment under his Timber and Stone Sworn Statement No. 274, at the U. S. Land Office at Boise, Idaho, for Lot No. 3, NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  of the SE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  of the NE.  $\frac{1}{4}$ , Sec. 30, Twp. 7 N. of Range 5 E.

That he has not since making said proof or at any time, sold or assigned or agreed to sell or assign his interest in said premises or the timber thereon or any part thereof to any person or persons, corporation or association of persons.

That he has not directly or indirectly alienated or agreed to alienate his right, title or interest in said land or the timber thereon since making said proof or at all.

WALTER L. HARRISON.

Subscribed and sworn to before me this 25 day of August A. D. 1902.

[Notarial Seal]

L. M. PRITCHARD,

Notary Public.

(Back)

Plaintiff's Exhibit No. 285. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 286.**

State of Idaho,  
County of Ada,—ss.

Personally appeared before me, Joseph M. Hollister, who after first being duly sworn, deposes and says, that he is the identical person who offered proof

concerning the purchase of SE.  $\frac{1}{4}$ , of Sec. 7, in Township 7 N. of Range 5 E. of Boise Meridian, on January 21st, 1902 (under an act of Congress of June 3rd, 1878); and he further says that the statements then made are true, and that the filing was made in good faith and for the sole benefit of affiant; that he has not, either before or since offering proof, entered into any agreement implied or otherwise to mortgage or sell or in any manner dispose of his title or the title which he might by reason of said claim acquire.

J. M. HOLLISTER.

Subscribed and sworn to before me this 25 day of July, 1902.

JAMES KING,  
Register.

(Back)

Plaintiff's Exhibit No. 286. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 287.**

UNITED STATES LAND OFFICE.

Boise, Idaho, December 22, 1902.

Fannie R. Hart, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement # 570 at this office on September 9, 1902, for the purchase of the SW.  $\frac{1}{4}$  of Sec. 11, Tp. 7 N., R. 8 E., B. M.; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her



sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

FANNIE R. HART.

Subscribed and sworn to before me this 22d day of December, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

Plaintiff's Exhibit No. 287. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 288.**

UNITED STATES LAND OFFICE.

Boise, Idaho, December 22, 1902.

Caro F. B. Kingsley, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #575 at this office on September 11, 1902; for the purchase of the NW.  $\frac{1}{4}$  of Sec. 14, Tp. 7 N., R. 8 E., B. M.; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of

her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

CARO F. B. KINGSLEY.

Subscribed and sworn to before me this 22d day of December, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

Plaintiff's Exhibit No. 288. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 289.**

IN THE UNITED STATES LAND OFFICE.

At Boise, Idaho.

State of Idaho,  
County of Ada,—ss.

Mary Link, of lawful age being first duly sworn on her oath deposes and says:

That she is the identical person who on the 29 day of January, A. D. 1902, made final proof upon and tendered payment under her Timber and Stone Sworn Statement No. 264 at the U. S. Land Office at Boise, Idaho, for the N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 22, N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 23 Twp. 7 N. R. 5 E.

That she has not since making said proof or at any time sold or assigned or agreed to sell or assign her interest in said premises or the timber thereon to any person or persons, corporation or association of



persons.

That she has not alienated or agreed to alienate, directly or indirectly, her right, title or interest in said land or the timber thereon since making said proof or at all.

MARY LINK.

Subscribed and sworn to before me this 7 day of August, A. D. 1902.

[Notarial Seal]

L. M. PRITCHARD,  
Notary Public.

(Back)

Plaintiff's Exhibit No. 289. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 290.**

UNITED STATES LAND OFFICE.

Boise, Idaho, March 18, 1903.

Henrietta B. Martin, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #636 at this office on September 29, 1902, for the purchase of Lots 1 and 2, and E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 7, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof on the 18th day of March, 1903; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other

person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

HENRIETTA B. MARTIN.

Subscribed and sworn to before me this 18th day of March, 1903.

EDWARD E. GARRETT,

Receiver.

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Plaintiff's Exhibit No. 290. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 291.**

IN THE UNITED STATES LAND OFFICE,  
BOISE, IDAHO.

NON-ALIENATION AFFIDAVIT.

State of Idaho,  
County of Ada,—ss.

Wheeler H. Martin being first duly sworn deposes and says:

That he is the identical person who filed Timber and Stone Application No. 1038, at the United States Land Office at Boise, Idaho, and who on December 11, 1903, made proof of the character of said land and of his qualification to be allowed to purchase said above described tract under the provisions of the act of Congress of June 3, 1878 as amended by the act of August 4, 1898:—

That he has not sold, assigned, relinquished, or in any manner alienated any title which he claimed in

said land or entry, or, agreed so to do upon obtaining title thereto, and has not in any manner incumbered said tract of land.

That since the said 11th day of December, 1903, he has done no act whereby the title to said tract has been in any manner changed from that in which it was when on that date he testified to the same, nor has he made any agreement or contract in any way or manner with any person or persons, firm or corporation concerning the same.

WHEELER H. MARTIN.

Subscribed and sworn to before me this 8th day of March, 1904.

EDWARD E. GARRETT,  
Receiver.

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In the United States Land Office, Boise, Idaho.  
In re T. & S. Appln. 1038. By Wheeler H. Martin.  
Non-Alienation Affidavit. Filed March 8, 1904.  
No. 47. Filed Mar. 13, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 292.**

**UNITED STATES LAND OFFICE.**

Boise, Idaho, February 14, 1903.

Pearl I. Nusbaum, being first duly sworn deposes and says:

That she is the identical person who made timber and stone sworn statement #655 at this office on October 7, 1902, for the purchase of the SE.  $\frac{1}{4}$  of Section 22, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof on the 13th day of February,

1903; that the reason she did not appear on said 13th day of February, was that because she could not secure two of her advertised witnesses; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

PEARL I. NUSBAUM.

Subscribed and sworn to before me this 14th day of February, 1903.

EDWARD E. GARRETT,

Receiver.

(Back)

Plaintiff's Exhibit No. 292. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 293.**

UNITED STATES LAND OFFICE,

Boise, Idaho, December 11, 1902.

Mary E. Ownbey, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #541 at this office on August 30, 1902, for the purchase of Lot 2, SW.  $\frac{1}{4}$

NE.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 3, Tp. 7 N., R. 7 E., B. M.

That she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

MARY E. OWNBEY.

Subscribed and sworn to before me this 11th day of December, 1902.

EDWARD E. GARRETT,  
Receiver.

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Plaintiff's Exhibit No. 293. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 294.**

UNITED STATES LAND OFFICE.

Boise, Idaho, March 17, 1903.

Arietta H. Stahl, being first duly sworn, deposes and says:

That she is the identical person who made timber and stone sworn statement #635 at this office on September 29, 1902, for the purchase of Lots 3 and 4 and E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 7, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof therefor on the

17th day of March, 1903; that she is a married woman; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

ARIETTA H. STAHL.

Subscribed and sworn to before me this 17th day of March, 1903.

EDWARD E. GARRETT,

Receiver.

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Plaintiff's Exhibit No. 294. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 295.**

**AFFIDAVIT.**

State of Idaho,  
County of Ada,—ss.

Mary Starn, of lawful age, being first duly sworn according to law, deposes and says: That she is the identical person who on Sept. 6, 1902, filed in this office her sworn statement No. 559, for the purchase of SE.  $\frac{1}{4}$ , Sec. 10, T. 7 N. R. 8 E. and who now offers proof in support of her claim.

She further deposes and says: That she is a mar-



ried woman, being the wife of Edward H. Starn, but that she purposes to purchase this tract with her own money, in which her husband has no interest or claim, that this purchase is made for her own exclusive use and benefit, and that she has made no contract or agreement whereby any interest she may acquire from this purchase may inure to the benefit of her husband or any other person.

MARY STARN.

Subscribed and sworn to before me this 18th day of December, 1902.

EDWARD E. GARRETT,  
Receiver.

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Plaintiff's Exhibit No. 295. No. 47. Filed Jun. 15, 1909. A. L. Richardson, Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 296.**

UNITED STATES LAND OFFICE,

Boise, Idaho, November 11, 1902.

Jennie E. Thompson, being first duly sworn deposes and says:

That she is the identical person who made timber and stone sworn statement #501 on August 11, 1902, for the purchase of the SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$ , Sec. 34, and E.  $\frac{1}{2}$  of NE.  $\frac{1}{4}$ , Sec. 33, Tp. 7 N., R. 4 E., and who advertised to offer proof therefor on the 11th day of November, 1902; that she, this day, relinquishes all claim to the SE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$  of said Sec. 33; that she is a married woman; that she purposes to purchase said land with her

separate money, in which her husband has no interest or claim; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person or association of persons.

JENNIE E. THOMPSON.

Subscribed and sworn to before me this 11th day of November, 1902.

EDWARD E. GARRETT,  
Receiver.

(Back)

No. 47. Filed Jun. 15, 1909. A. L. Richardson,  
Clerk U. S. Circuit Court.

**Plaintiff's Exhibit No. 297.**

IN THE UNITED STATES LAND OFFICE,  
BOISE, IDAHO.

State of Idaho,  
County of Ada,—ss.

John U. Cassell, being first duly sworn according to law, deposes and says, that he is the same person who did on the 7 day of March A. M. 1902, make final proof upon and tender of payment for the South West Quarter of Section No. 25 of Township No. 8, North of Range No. 5 E., in Boise County, Idaho, under the act of June 3, 1878; and that he has not sold or assigned or in any manner alienated or agreed to alienate his right title or claim to said land or the timber thereon, since offering

said proof or at all, and further affiant saith not.

JOHN U. CASSELL.

Subscribed and sworn to before me this 4 day of  
November, A. D. 1902.

[Notarial Seal]

L. M. PRITCHARD,

Notary Public.

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Plaintiff's Exhibit No. 297. No. 47. Filed Jun.  
15, 1909. A. L. Richardson, Clerk U. S. Circuit  
Court.

**Plaintiff's Exhibit No. 298.**

IN THE UNITED STATES LAND OFFICE,  
Boise, Idaho.

State of Idaho,  
County of Ada,—ss.

Gustave H. Rothine being first duly sworn on his  
oath deposes and says:

That he is the identical person who on the 14 day  
of Feb., A. D. 1902, made final proof upon and ten-  
dered payment for timber and stone, sworn state-  
ment No. 279 at the United States land office at  
Boise, Idaho, for the S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of SE.  
 $\frac{1}{4}$ , Sec. 5 Tp. 7 N. R. 5 E.

That he has not since making said proof or at any  
time sold or assigned or agreed to sell or assign his  
interest in said premises, or the timber thereon to  
any person or persons, corporation or association of  
persons.

That he has not directly or indirectly alienated  
or agreed to alienate his right, title or interest in  
said land or the timber thereon since making said

proof or at all to any person or in any manner.  
That my present address is 240 3d St., Portland, Or.

GUSTAVE H. ROTHINE.

Subscribed and sworn to before me this 14 day of  
July, A. D. 1902.

EDWARD E. GARRETT,  
Receiver.

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Plaintiff's Exhibit No. 298. No. 47. Filed Jun.  
15, 1909. A. L. Richardson, Clerk U. S. Circuit  
Court.

**Plaintiff's Exhibits Nos. 299.**

List of witnesses for whom subpoenas were  
issued in the case of the United States vs. the Bar-  
ber Lumber Co. et al., and the Marshal's return of  
service and non-service.

This list is copied in full in the record at page  
2798, et seq.

**WARRANTY DEEDS.**

**Plaintiff's Exhibit No. 300.**

From HENRY A. SNOW, and wife, Minnie, to  
A. E. Palmer, Aug. 17, 1903; consideration \$2000.00;  
acknowledged before John M. Haines, Notary Pub-  
lic, conveying the South One-half of the Southwest  
quarter, South One-half of the Southeast Quarter,  
North One-half of the Southwest Quarter, and the  
South half of the Northwest Quarter, Section 8, Tp.  
7 North of Range 5 East, Boise Meridian. Filed for  
record at the request of W. E. Borah, June 27th,  
1904.

**Plaintiff's Exhibit No. 301.**

From JOHN KINKAID to A. E. Palmer, April 16, 1904, consideration \$1000.00; acknowledged before L. M. Pritchard, Notary Public, conveying the Southeast Quarter of Section 7, Tp. 6 North of Range 5 East, Boise Meridian. Filed for record at the request of W. E. Borah, May 10, 1904.

**Plaintiff's Exhibit No. 302.**

From PATRICK H. DOWNS to A. E. Palmer, August 27, 1904; consideration \$1400.00; acknowledged before L. M. Pritchard, Notary Public, conveying the North Half of the Northeast Quarter, and the North One-half of the Northwest Quarter, of Section 17, Tp. 7 North of Range 5 East, Boise Meridian. Filed for record at the request of the Barber Lumber Co., Nov. 7th, 1905.

**Plaintiff's Exhibit No. 303.**

From WM. F. SNOW, to A. E. Palmer. Oct. 20, 1902; consideration \$1000.00; acknowledged before G. A. Will, Notary Public, Hennepin County, Minnesota, conveying the West One-half of the Northwest Quarter, and the West One-half of the Southwest Quarter of Section 22, Tp. 7 North of Range 5 East, Boise Meridian. Filed for record at the request of W. E. Borah, Feb. 29, 1904.

**Plaintiff's Exhibit No. 304.**

From WILLIAM H. HUMPHREYS and LYDIA E. HUMPHREYS, husband and wife, to A. E. Palmer, dated March 19, 1903; consideration \$1600.00; acknowledged before L. M. Pritchard, Notary Public, conveying the East One-half of the

Northwest Quarter, and Lots 1 and 2, of Section 18, Tp. 7 North of Range 6 East, Boise Meridian, containing 151 acres, and the Southeast Quarter of Section 33, Tp. 7 North of Range 5 East, Boise Meridian, containing 160 acres. Filed for record at the request of W. E. Borah, June 29, 1903.

**Plaintiff's Exhibit No. 305.**

From CHARLES M. WILMOT and wife Florence M. to A. E. Palmer, dated March 30, 1903; consideration \$1000.00; acknowledged before L. M. Pritchard, Notary Public, conveying the Northeast Quarter of Section 24, Tp. 7 North of Range 5 East, Boise Meridian. Filed for record at the request of W. E. Borah, June 29, 1903.

**Plaintiff's Exhibit No. 306.**

From JAMES R. THOMPSON and NELLIE J. THOMPSON, husband and wife to A. E. Palmer, dated Aug. 12, 1903; consideration \$800.00; acknowledged before J. E. Porter, Notary Public, Blue Earth County, Minnesota, conveying the South One-half of the Southwest Quarter of Section 30, and the North One-half of the Northwest Quarter of Section 31, Tp. 7 North of Range 5 East, Boise Meridian, as entered for patent by said Nellie J. Thompson. And filed for record at the request of W. E. Borah, June 27, 1904.

**Plaintiff's Exhibit No. 307.**

From CHARLES C. STEVENSON, and wife, Mattie B. to Horace S. Rand, dated Aug. 16, 1904; consideration \$1000.00, and acknowledged before Harry C. Wyman, Notary Public, conveying the West One-half of the Northeast Quarter and the



West One-half of the Southeast Quarter of Section 14, Tp. 7 North of Range 8, East, Boise Meridian, and filed for record at the request of W. E. Borah, Sept. 1, 1904.

**Plaintiff's Exhibit No. 308.**

From ELMER G. DODDS AND HANNAH DODDS, husband and wife, to Horace S. Rand, dated Sept. 19, 1903; consideration \$1600.00; acknowledged before John M. Haines, Notary Public, conveying the Northwest Quarter of Section 32, and Lot 4, the Southeast Quarter of the Southwest Quarter, and the South One-half of the Southeast Quarter of Section 18, all in Tp. 7 North of Range 8 East, Boise Meridian, as entered for Patent by grantors, in Boise Land Office. Filed for record at the request of W. E. Borah, July 1st, 1904.

**Plaintiff's Exhibits Nos. 309A to 309N.**

**Plaintiff's Exhibit No. 309A.**

FRANK MARTIN: Residence, Boise, Idaho; occupation, attorney at law.

Sworn Statement, No. 1092, dated and filed Sept. 21, 1903, for entry of North One-half of the Northeast Quarter and North One-half of the Northwest Quarter of Section 10, Tp. 6 North of Range 4 East, B. M.

**Plaintiff's Exhibit No. 309B.**

Cross-examination of witness, Henry F. Cassidy, at final proof.

**Plaintiff's Exhibit No. 309C.**

Testimony of witness, Henry F. Cassidy, at final proof.

**Plaintiff's Exhibit No. 309D.**

Cross-examination of witness, Patrick H. Downs, at final proof.

**Plaintiff's Exhibit No. 309E.**

Testimony of witness Patrick H. Downs, at final proof.

**Plaintiff's Exhibit No. 309F.**

ANSWERS given by Frank Martin to Questions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Ques. 16: Yes. I expect to pay for the land with my own money.

Answer to Ques. 17: From my professional earnings, have had as much as \$400 on hand all the time for the past ten years.

Answer to Ques. 18: Yes, at the Capital State Bank, Boise, Idaho.

**Plaintiff's Exhibit No. 309G.**

Testimony of Frank Martin, at final proof, dated January 5th, 1904.

**Plaintiff's Exhibit No. 309H.**

Affidavit of Publication.

**Plaintiff's Exhibit No. 309 I.**

Notice for Publication; witnesses for final proof, Henry F. Cassidy, Charles B. Faraday, Wm. B. Davidson, and Patrick H. Downs.

**Plaintiff's Exhibit No. 309J.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 309K.**

Receiver's Receipt, No. 2819, dated Jan. 5th, 1904.

**Plaintiff's Exhibit No. 309L.**

Final Certificate No. 2819, dated Jan. 5th, 1904.

**Plaintiff's Exhibit No. 309M.**

Deed from Frank Martin and Ella L. Martin, husband and wife, to the Barber Lumber Company, a corporation, dated Dec. 6th, 1904; consideration \$1900.00; acknowledged before H. W. Dunton, Notary Public, conveying land described in Exhibits 309A to 310A. Filed for record at the request of the Barber Lumber Co., July 24, 1905.

**Plaintiff's Exhibit No. 309N.**

RELINQUISHMENT OF JAMES T. BALL.

“UNITED STATES LAND OFFICE, BOISE  
CITY, IDAHO.

Involving Timber and Stone Sworn Statement No.  
228, for the SW.  $\frac{1}{4}$  of Section 13, Tp. 7 North  
of Range 5 East, B. M.

UNITED STATES

vs.

JAMES T. BALL.

The officers of the above-entitled land office, having rejected the final proof offered by defendant on said application, after a hearing, and having ordered said application to enter, rejected and cancelled, and such proceedings having been had in said case, that the Honorable Secretary of the Interior has finally sustained said decision, and ordered said proof rejected, and said entry cancelled, and having received notice of said decision, and further notice that thirty

days will be given in which to apply for a rehearing or review of said decision:

Therefore, I, James T. Ball, of Centerville, Boise County, Idaho, said applicant to purchase, and the defendant in said case, hereby waive my right to apply for a rehearing in this case, and for a review of said decision of the Honorable Secretary of the Interior, and relinquish to the Government of the United States all right or claim, I may have on account of said application to purchase the above described land.

JAMES T. BALL.

Signed, sealed and delivered in the presence of,  
NORMAN H. YOUNG."

"State of Idaho,  
County of Boise,—ss.

On this 21st day of June in the year 1905, before me Norman H. Young, a Notary Public in and for said county, personally appeared James T. Ball, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal]

NORMAN H. YOUNG,  
Notary Public."

**Plaintiff's Exhibits Nos. 310A to 310M.**

**Plaintiff's Exhibit No. 310A.**

ELLA L. MARTIN: Residence, Boise, Idaho; occupation, housewife.

Sworn Statement No. 1091, dated and filed Sept. 21st, 1903, for entry Northwest Quarter of the Northeast Quarter of Section 27, and West One-half of Southeast Quarter, and Northeast Quarter of the Southeast Quarter, Section 22, Tp. 6 North of Range 4 East, Boise, Idaho.

**Plaintiff's Exhibit No. 310B.**

Notice for Publication; witnesses for final proof, Alexander T. Ellis, Henry F. Cassidy, Thomas L. Martin, Patrick H. Downs.

**Plaintiff's Exhibit No. 310C.**

Affidavit of Publication.

**Plaintiff's Exhibit No. 310D.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 310E.**

Cross-examination of witness, Henry F. Cassidy, on final proof.

**Plaintiff's Exhibit No. 310F.**

Testimony of witness, Henry F. Cassidy, on final proof.

**Plaintiff's Exhibit No. 310G.**

Cross-examination of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibit No. 310H.**

Testimony of witness, Patrick H. Downs, on proof.

**Plaintiff's Exhibit No. 310 I.**

Non-alienation Affidavit.

**Plaintiff's Exhibit No. 310J.**

ANSWERS Given by Ella L. Martin, to Questions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Ques. 16: I did. I do.

Answer to Ques. 17: I earned the money teaching school and as Secy. of the School Board. Have had money several years.

Answer to Ques. 18: Yes, Capital State Bank, Boise, Idaho, up until 6 months ago, when I withdrew my money to make an investment.

**Plaintiff's Exhibit No. 310K.**

Testimony of Ella L. Martin, on final proof, dated January 6th, 1904.

**Plaintiff's Exhibit No. 310L.**

Receiver's Receipt, No. 2827, Jan. 6, 1904.

**Plaintiff's Exhibit No. 310M.**

Final Certificate No. 2827, Jan. 6, 1904.

**Plaintiff's Exhibit No. 311.**

UNITED STATES

vs.

ARTHUR ANDERSON.

Decision of Register and Receiver Involving Timber and Stone Filing No. 226, of Arthur Anderson.

“DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE,

Boise, Idaho, April 9, 1904.

UNITED STATES

vs.

ARTHUR ANDERSON.

Involving Timber and Stone Filing #226, for the  
E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 15, T. 7 N.,  
R. 5 E., B. M.



## DECISION OF REGISTER AND RECEIVER.

On September 24, 1901, Arthur Anderson of Pioneerville, Boise County, Idaho, made timber and stone sworn statement #226, at this office for the purchase of the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 15, T. 7 N., R. 5 E., B. M. Date of final proof was set for December 5, 1901, the proof not being offered until December 10, 1901. No certificates or receipts were issued.

November 10, 1902, letter "P" the application was suspended on a report of a special agent that he found said tract on examination, to be timber land, probably mineral in character; that this entry was made in the interest and at the instance of John I. Wells of Boise, Idaho, who is associated with one Patrick Downs in carrying on an extensive timber land business, and that claimant made an agreement to transfer the land to Wells as soon as he obtained title thereto.

Notice of the suspension was served personally on the claimant December 19, 1902, application for a hearing being filed January 13, 1903, and accordingly a hearing was ordered by letter "P" of August 25, 1903. Notice of hearing issued from this office setting hearing for December 9, 1903.

Hearings in the cases of United States vs. A. E. Hunter, H. H. Wells and James T. Ball, involving timber and stone filings Nos. 227, 224 and 228, respectively, such filings being located in the same locality as that of Anderson and the charges against them being practically the same, were set for the same day, December 9, 1903, taking of testimony in

such cases being postponed until the conclusion of the Anderson case.

December 9, 1903, case was regularly called. Special Agent L. L. Sharp appearing for the Government, the defendant appearing personally and by counsel, H. S. Worthman, Esq. At request of Special Agent Sharp, M. G. Cage, Esq., was entered as counsel for the Government, assisting the special agent to which the defendant objected. At request of Mr. Worthman, for the defense, Frank Martin, Esq., was entered as associate counsel. At request of counsel for the defendant, the presenting of testimony was postponed until December 10, 1903, when the taking of testimony was prosecuted from day to day until December 30, at midnight.

Brief on behalf of the Government was filed January 30, 1904, and brief by the defense on March 28, 1904.

The testimony adduced shows that the defendant, Arthur Anderson, admitted to Special Agent Sharp on May 18, 1902, and made affidavit at that time, that he made the filing and proof at the instance of John I. Wells; that he received a portion of the purchase money from said Wells at time of making proof; that he was to receive \$237.50 net, for making the entry, and that of this sum he had been paid \$137.50. At the trial, Anderson denied the admissions made to the Special Agent, and attempted to void them by asserting he was under the influence of liquor at the time, testifying that he received \$200 from John I. Wells when he made proof, the transaction taking place in a room in the Pacific Hotel, and was a loan

from Wells though he gave no security or evidence of the debt; that after offering proof he went to the office of attorney John Kinkaid where he received \$137.50, giving a due bill for that amount; that this was a loan from Wells which he negotiated at the time he borrowed the \$200. in the Pacific Hotel earlier in the day; that he did not borrow it all at once because Wells told him he did not have enough money at the hotel.

It is shown that the defendant made admissions to other persons and before making the one to the special agent. To his friend, H. F. Cooper, on his way home after submitting the proof, he told Cooper, in response to an inquiry, to let it alone, that if he (Anderson) had it to do over again, he would not do it, that it was necessary to lie straight through. C. R. Poncia and Nelson Bottcher, old friends of Anderson at Pioneerville, Idaho, testified to Anderson's admissions to them which were substantially along the same lines of those to the special agent of May 18, 1902, the admissions being made to them during December, 1901, on the return of Anderson after offering proof. Poncia and Bottcher wrote a joint letter to Senator Dubois in January, 1902, alleging a conspiracy on the part of some persons or company, through John I. Wells, to obtain timbered lands in the Boise Basin by means of filings under the Timber and Stone Act, reciting that the people making the entries were to receive \$237.50 for the service. They state in such letter, that they are indebted to Arthur Anderson for the information and recite that, in addition to Anderson, A. P. Nugent,

H. H. Wells, James T. Ball, John Wells, Mrs. John Wells, Homer Granger, Able Edward Hunter, Mrs. Katie Hunter and T. M. Glass had also offered proofs for lands in the same locality.

Albert P. Nugent, who made timber and stone filing #25, for land in the same vicinity and at the same time as Anderson and who submitted proof at the same time made a confession and affidavit to Special Agent Sharp on June 21, 1902; that he made the filing and proof at the instance of John I. Wells; that he was to receive \$250, for making the entry for Wells; that he received the purchase money from Wells; that he took the receipt given him at the U. S. Land Office, acknowledging deposit of purchase money and fees, to John Kinkaid, who gave him \$137.50, informing him the balance of \$100, would be paid when title was transferred, the \$12.50 fees being deducted from the \$250 payment for making the entry; that John Kinkaid did not appear in the transaction until the time of proof, neither Wells nor Kinkaid made any attempt to disguise that they were interested in managing a large timber land deal, securing people to make entries and paying them for so doing, and that at the time he offered proof, H. H. Wells, James T. Ball and Able Edward Hunter, besides Anderson, made similar entries and under the same conditions. At the trial, Nugent was called on behalf of the Government, reciting in detail the particulars as to his own and Anderson's proof, testifying to substantially the same as in his affidavit of June 21, 1902, giving the particulars more minutely; that he was present, and saw Ander-

son receive the purchase money from John I. Wells in a room in the Pacific Hotel in Boise just before going to the U. S. Land Office to offer proof; that he also received the purchase money from Wells at the same time and place; that he, Anderson, Hunter, H. H. Wells, and Ball came to Boise about December 4, 1901, and did not offer proofs on the days set because they did not receive the money to make the necessary payments, John I. Wells stating the money was delayed; that on the morning of December 10, 1901, John I. Wells having informed him the money had arrived, he and Anderson went with said Wells to attorney John Kinkaid's office in the Pioneer Building where Kinkaid gave Wells money, Wells taking the same to a room in the Pacific Hotel where he gave Anderson and Nugent the purchase money; that after offering proof he went with Anderson to Kinkaid's office, surrendered the receipts to Kinkaid, and received from Kinkaid \$137.50. Nugent was subjected to a close and lengthy cross-examination by counsel for the defense, but without changing his statements in any material particular.

It is shown that John I. Wells was active in getting Anderson to apply for a hearing, and that he wrote several letters to Nugent urging him to apply for a hearing, sending him the necessary papers, stating he would see him through, and made a trip to Silver City to see Nugent for the purpose.

The witnesses for the defense were Able E. Hunter, James T. Ball, Harvey H. Wells, Arthur Anderson and John I. Wells, all interested parties.



The entries of each have similar charges against them, except that of John I. Wells, but who is alleged to be directly interested in each case. Anderson's explanation of the money transactions with Wells, in view of the admissions made, is quite clever and might be said to be plausible were it not so plain that it is an attempt to cover some ugly facts. That Anderson, when making the admissions, was sufficiently sober to tell the same story on divers occasions is shown by the testimony of Special Agent Sharp, C. R. Poncia and Nelson Bottcher.

The testimony of John I. Wells as to his connection with the Anderson proof is peculiar. His explanation as to the money transaction does not explain at all. Why should he give Anderson \$200, as he says, in the forenoon, without security or evidence of debt, and then in the afternoon have an attorney handle the transaction and secure a simple due bill for the odd amount of \$137.50 which, by the way, is the same odd amount that Nugent received at the same time and place? Clearly there was a "deal" which has been sufficiently exposed for the purposes of this case.

From the record before us and from our knowledge of the conditions and circumstances surrounding the case, we are of the opinion that Anderson was not offering the purchase for his own use and benefit, but was making the same for the use and purposes of others.

We hold that the timber and stone filing of Arthur Anderson, covering the E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ ,



Sec. 15, T. 7 N., R. 5 E., B. M., should be cancelled.

HARRY J. SYMS,

Register.

EDWARD E. GARRETT,

Receiver."

**Plaintiff's Exhibits Nos. 312A to 312K.**

**Plaintiff's Exhibit No. 312A.**

JAMES T. BALL: Residence, Centerville, Idaho; occupation, miner.

Sworn Statement No. 228, dated and filed Sept. 25, 1901, for entry of Southwest Quarter of Section 13, Tp. 7 North of Range 5 East, B. M.

**Plaintiff's Exhibit No. 312F.**

Notice for Publication; witnesses for final proof; Able E. Hunter, Harvey H. Wells, John I. Wells, Albert P. Hugent.

**Plaintiff's Exhibit No. 312B.**

Affidavit of James T. Ball, in re postponement date of making final proof.

**"DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE,**

Boise, Idaho; December 10, 1901.

James T. Ball, being first duly sworn, deposes and says, that he is the identical James T. Ball who made Timber and Stone Sworn Statement No. 228, at this office on September 25, 1901, for SW.  $\frac{1}{4}$ , Sec. 13, Tp. 7 N., R. 5 E., on which final proof was advertised to be made at this office on the 6th day of December, 1901; that he was unable to appear on that day or any of the subsequent days until this 10th day of

December, 1901, because the money with which he expected to make payment for this land was loaned out and he could not get it until today.

J. T. BALL.

Subscribed and sworn to before me this 10th day of December, 1901.

EDWARD E. GARRETT,  
Receiver."

**Plaintiff's Exhibit No. 312C.**

ANSWERS Given by James T. Ball to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Ques. 16: Yes, sir. Yes, sir.

Answer to Ques. 17: Got some of it from rental of property in the east, and some I saved from my wages.

Answer to Ques. 18: Yes, sir, Bank of Commerce, Boise, Idaho.

**Plaintiff's Exhibit No. 312D.**

Testimony of James T. Ball, on final proof, dated December 10th, 1901.

**Plaintiff's Exhibit No. 312E.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 312G.**

Cross-examination of witness, Harvey H. Wells, at final proof.

**Plaintiff's Exhibit No. 312H.**

Testimony of witness, Harvey H. Wells, at final proof.

**Plaintiff's Exhibit No. 312 I.**

Cross-examination of witness, Bert Nugent, at final proof.

**Plaintiff's Exhibit No. 312 J.**

Testimony of witness, Bert Nugent, at final proof.

**Plaintiff's Exhibit No. 312K.**

Affidavit of Publication.

**Plaintiff's Exhibits Nos. 313A to 313K.**

**Plaintiff's Exhibit No. 313A.**

HARVEY WELLS: Residence, Centerville, Idaho; occupation, miner.

Sworn Statement No. 224, dated and filed Sept. 24, 1901, for entry of Southwest Quarter of Section 14, Tp. 7 North of Range 5 East, B. M.

**Plaintiff's Exhibit No. 313B.**

Relinquishment of Harvey H. Wells, involving Timber & Stone Sworn Statement No. 224.

**Plaintiff's Exhibit No. 313C.**

Cross-examination of witness, Arthur Anderson, on final proof.

**Plaintiff's Exhibit No. 313D.**

Testimony of witness, Arthur Anderson, at final proof.

**Plaintiff's Exhibit No. 313E.**

Cross-examination of witness, Burt Nugent, at final proof.

**Plaintiff's Exhibit No. 313F.**

Testimony of witness, Burt Nugent, at final proof.

**Plaintiff's Exhibit No. 313G.**

Acknowledgment by Frank Martin and Harry S. Worthman, attorneys for Harvey H. Wells, of service of decision in case of United States vs. Harvey H. Wells, involving timber & stone filing No. 274.

**Plaintiff's Exhibit No. 313H.**

Application for hearing charges made by Special Agent G. L. O. against the entry of Harvey H. Wells.

**Plaintiff's Exhibit No. 313 I.**

Notice of Appeal.

**Plaintiff's Exhibit No. 313 J.**

Notice of appeal, brief and argument of Harry S. Worthman and Frank Martin, attorneys for Harvey H. Wells, service of the same accepted by Louis L. Sharp & Milton G. Cage, Attorney for the U. S., May 6, 1904.

**Plaintiff's Exhibit No. 313K.**

LETTER FROM SECRETARY OF INTERIOR  
TO COMMISSIONER G. L. O., APPROVING  
REJECTION OF FILING OF HARVEY H.  
WELLS.

“DEPARTMENT OF THE INTERIOR,  
WASHINGTON.

May 24, 1905.

UNITED STATES

vs.

HARVEY H. WELLS.

The Commissioner of the General Land Office.

Sir: An appeal has been filed by Harvey H. Wells from the decision of your office of November 19,

1904, sustaining the decision of the local officers in rejecting his timber and stone application, and the final proof submitted by him, covering the SW.  $\frac{1}{4}$  of Sec. 14, T. 7 N., R. 5 E., Boise, Idaho.

By stipulation this case was consolidated with those of United States v. Able Edward Hunter and United States v. James T. Ball, the testimony therein to be considered in determining the three cases; and it was further stipulated that the testimony taken in the case of United States v. Arthur Anderson from the same land district should also be considered in connection with said three cases.

Upon careful examination of all the matters presented by the combined records no good reason appears for disturbing the action taken by your office and the same is hereby affirmed.

The papers are returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary."

**Plaintiff's Exhibits Nos. 314A to 314K.**

**Plaintiff's Exhibit No. 314A.**

LEONORA HOLLISTER: Residence, Boise.

Notice for Publication; witnesses for final proof, filing of Sworn Statement No. 252, for entry of North One-half of the Northeast Quarter and Southwest quarter of the Northeast Quarter, and Northwest Quarter of the Southeast Quarter, Section 18, Tp. 7 North of Range 5 East, Boise Meridian. Witnesses for final proof, James Hamilton, Joseph M. Hollister, Patrick H. Downs, Charles Balentine.

**Plaintiff's Exhibit No. 314B.**

Certificate of Register and Receiver, in re postponement date of making final proof.

**Plaintiff's Exhibit No. 314C.**

Affidavit of Leonora Hollister, in re postponement date of making final proof.

**Plaintiff's Exhibit No. 314D.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 314E.**

Certificate of Register and Receiver, in re discrepancy between date of making proof, and Receiver's Receipt and Register's Certificate.

**Plaintiff's Exhibit No. 314F.**

Affidavit of Publication.

**Plaintiff's Exhibit No. 314G.**

Non-alienation Affidavit.

**Plaintiff's Exhibit No. 314H.**

Cross-examination of witness, Charles W. Balentine, on final proof.

**Plaintiff's Exhibit No. 314 I.**

Testimony of witness, Charles W. Balentine on final proof.

**Plaintiff's Exhibit No. 314 J.**

Cross-examination of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibit No. 314K.**

Testimony of Patrick H. Downs on final proof.



**Plaintiff's Exhibits Nos. 315A to 315E.**

**Plaintiff's Exhibit No. 315A.**

JOHN M. NEIL: Residence, Boise, Ida. See, also, Exhibit No. 18.

Affidavit of Publication.

**Plaintiff's Exhibit No. 315B.**

Notice for Publication; witnesses for final proof, E. J. Dockery, Eva Hunt Dockery, Patrick H. Downs and John I. Wells.

**Plaintiff's Exhibit No. 315C.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 315D.**

Testimony of witness, E. J. Dockery, on final proof.

**Plaintiff's Exhibit No. 315E.**

Testimony of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibits Nos. 316A to 316 I.**

**Plaintiff's Exhibit No. 316C.**

IDA M. BRIGGS: Residence, Boise, Idaho; occupation, housewife.

Sworn Statement No. 295, dated and filed, Dec. 19, 1901, for entry of Lots 1 and 2, and South One-half of the Northeast Quarter of Section 1, Tp. 7 North of Range 5 East, Boise Meridian.

**Plaintiff's Exhibit No. 316D.**

Notice for Publication; witnesses for final proof, John I. Wells, Dora Burns, Patrick H. Downs and John Gary.

**Plaintiff's Exhibit No. 316E.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 316F.**

Cross-examination of witness, Dora C. Burns, on final proof.

**Plaintiff's Exhibit No. 316G.**

Testimony of witness, Dora C. Burns, on final proof.

**Plaintiff's Exhibit No. 316H.**

Cross-examination of witness, John R. Gary, on final proof.

**Plaintiff's Exhibit No. 316 I.**

Testimony of witness, John R. Gary, on final proof.

**Plaintiff's Exhibit No. 316 J.**

Non-alienation Affidavit.

**Plaintiff's Exhibit No. 316K.**

ANSWERS Given by Ida M. Briggs, to Questions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Question 16: I did. I do.

Answer to Question 17: From our savings, from my husband's earnings and some for 5 years.

Answer to Question 18: No, sir. I keep it at home. Residence, 432 Lover's Lane, Boise, Idaho.

**Plaintiff's Exhibit No. 316L.**

Testimony of Ida M. Briggs, at final proof. Dated March 6th, 1902.

**Plaintiff's Exhibit No. 316A.**

Relinquishment of Ida M. Briggs and request of refund of money deposited at time of making proof.

**Plaintiff's Exhibit No. 316B.**

Letter from Register and Receiver to Commissioner, G. L. O., in re relinquishment and abandonment of filing made by Ida M. Briggs, and statement that purchase money has been returned.

**Plaintiff's Exhibits Nos. 317A to 317F.**

**Plaintiff's Exhibit No. 317A.**

CHARLES W. BALENTINE: Residence, Boise, Ida. See, also, Exhibit 10.

Affidavit of Publication.

**Plaintiff's Exhibit No. 317B.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 317C.**

Cross-examination of witness, Joseph M. Hollister, on final proof.

**Plaintiff's Exhibit No. 317D.**

Testimony of witness, Joseph M. Hollister, on final proof.

**Plaintiff's Exhibit No. 317E.**

Cross-examination of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibit No. 317F.**

Testimony of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibits Nos. 318A to 318H.****Plaintiff's Exhibit No. 318A.**

LOUISA B. WEST: Residence, Boise, Ida. (See, also, Exhibit No. 9.)

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 318B.**

Affidavit of Publication.

**Plaintiff's Exhibit No. 318C.**

Notice for Publication; witnesses for final proof, Charles Nelson, Gustus Link, John I. Wells, John Keane.

**Plaintiff's Exhibit No. 318D.**

Cross-examination of witness, Gustave A. Link, on final proof.

**Plaintiff's Exhibit No. 318E.**

Testimony of witness, Gustave A. Link, on final proof.

**Plaintiff's Exhibit No. 318F.**

Cross-examination of witness, Charles Nelson, on final proof.

**Plaintiff's Exhibit No. 318G.**

Testimony of witness, Charles Nelson, on final proof.

**Plaintiff's Exhibit No. 318H.**

Certificate of Register and Receiver, in re discrepancy between date of Certificate and Receiver's Receipt, and date of proof.

**Plaintiff's Exhibits Nos. 319A to 319H.**

**Plaintiff's Exhibit No. 319A.**

LOUIS NIBLER: Residence, Boise, Idaho.  
(See, also, Exhibit No. 17.)

REPORT OF REGISTER AND RECEIVER, IN  
RE TIMBER AND STONE SWORN STATE-  
MENT No. 261, OF LOUIS NIBLER.

“DEPARTMENT OF THE INTERIOR,  
U. S. LAND OFFICE,

Boise, Idaho, January, 28, 1902.

In re Timber and Stone Sworn Statement No. 261,  
of Louis Nibler, for SE.  $\frac{1}{4}$ , Sec. 23 Tp. 7 N. R.  
5 E.

**REPORT OF REGISTER AND RECEIVER.**

Final proof in this case was offered this day and the testimony of claimant and witnesses taken. Final certificate and receipt were not issued, per letter “p” of July 13, 1901.

Pursuant to the instructions contained in said letter, we have the honor to report that the instructions relative to the manner of taking such proof were carefully followed in this case; that the questions propounded to the claimant and witnesses were explained fully when necessary; that we are satisfied that the answers were made understandingly; that section 5392 of the Revised Statutes was read to the claimant and witnesses.

This is a filing for land in the Boise Basin. The entrymen offered the proof in a straightforward manner—his bearing and conduct being apparently

open and frank. From the testimony it appears to be an entry within the law and should therefore be allowed.

JAMES KING,  
Register.

EDWARD E. GARRETT,  
Receiver."

**Plaintiff's Exhibit No. 319B.**

Affidavit of Publication.

**Plaintiff's Exhibit No. 319C.**

Notice for Publication; witnesses for final proof, Charles Nelson, Louisa B. West, Patrick H. Downs, Henry A. Snow.

**Plaintiff's Exhibit No. 319D.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 319E.**

Cross-examination of witness, Charles Nelson, on final proof.

**Plaintiff's Exhibit No. 319F.**

Testimony of witness, Charles Nelson, on final proof.

**Plaintiff's Exhibit No. 319G.**

Cross-examination of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibit No. 319H.**

Testimony of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibits Nos. 320A to 320B.**

FREDERICK THURMAN: (See, also, Exhibit No. 40.)



**Plaintiff's Exhibit No. 320A.**

Cross-examination of witness, Adella C. Brookhart, on final proof.

**Plaintiff's Exhibit No. 320B.**

Testimony of witness, Adella C. Brookhart, on final proof.

**QUITCLAIM DEEDS.**

**Plaintiff's Exhibits Nos. 321A to 321D.**

**Plaintiff's Exhibit No. 321A.**

Has been copied in the record at page 2871, et seq.

QUITCLAIM DEED: A. E. Palmer to Barber Lumber Company, dated May 27, 1905; consideration \$1.00, and other valuable consideration; conveying 16,025 and 92/100 acres, more or less. Acknowledged before W. I. Boland, Notary Public, in and for the Province of Ontario Canada. Filed for record at the request of the Barber Lumber Company, June 3d, 1905.

**Plaintiff's Exhibit No. 321B.**

Has been copied in the record at page 2877, et seq.

QUITCLAIM DEED: Albert E. Palmer to the Barber Lumber Company, dated June 20, 1905; consideration \$1.00, and other valuable considerations conveying 480 acres; acknowledged before W. I. Boland, Notary Public. Filed for record at the request of the Barber Lumber Company, July 5th, 1905.

**Plaintiff's Exhibit No. 321C.**

Has been copied in the record at page 2879 et seq.

QUITCLAIM DEED from Horace S. Rand and

Ruth G. Rand to the Barber Lumber Company, dated July 24, 1905; consideration, \$1.00 and other valuable considerations, conveying 15,496 and 65/100 acres more or less; acknowledged before William F. Gilman, Notary Public, County of Des Moines, Iowa. Filed for record at the request of the Barber Lumber Company, July 28, 1905.

**Plaintiff's Exhibit No. 321D.**

Has been copied in the record at page 2886 et seq.

QUITCLAIM DEED from George S. Long and Harriet B. Long, dated April 25, 1905; consideration \$1.00 and other valuable considerations, conveying 4474 and 83/100 acres more or less; acknowledged before Hugh Stewart, Notary Public, State of Washington, Filed for record at the request of the Barber Lumber Company, Feb. 15, 1905.

**Plaintiff's Exhibits Nos. 322A to 322 I.**

**Plaintiff's Exhibit No. 322A.**

WILLIAM W. ABRAMS: Residence, Boise, Ida.

Notice for Publication; witnesses for final proof, Louis F. Folsom, Charles W. Balentine, Henry A. Snow, and Patrick H. Downs.

**Plaintiff's Exhibit No. 322B.**

Affidavit of Publication.

**Plaintiff's Exhibit No. 322C.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 322D.**

Affidavit of Publication of William F. Snow.

**Plaintiff's Exhibit No. 322E.**

Certificate of Register and Receiver, in re dis-

crepancy between date of proof and Register's Certificate and Receiver's Receipt.

**Plaintiff's Exhibit No. 322F.**

Cross-examination of Louis L. Folsom, on final proof, witness.

**Plaintiff's Exhibit No. 322G.**

Testimony of Louis L. Folsom, witness on final proof.

**Plaintiff's Exhibit No. 322H.**

Cross-examination Patrick H. Downs, witness on final proof.

**Plaintiff's Exhibit No. 322 I.**

Testimony of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibits Nos. 323A to 323L.**

**Plaintiff's Exhibit No. 323B.**

PATRICK H. DOWNS: Residence, Boise, Ida.; occupation, woodsman.

Sworn Statement No. 204, dated and filed Aug. 17, 1901, for entry of North One-half of the Northeast Quarter North One-half of the Northwest Quarter, Section 17, Tp. 7, North of 5 East, Boise Meridian.

**Plaintiff's Exhibit No. 323A.**

Notice for Publication; witness for final proof, Thomas J. Manning, Henry A. Snow, Julia M. Anderson, and Rose A. Walker.

**Plaintiff's Exhibit No. 323C.**

ANSWERS Given by Patrick H. Downs to Questions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Question 16: Yes, sir. Yes, sir.

Answer to Question 17: Money that I have saved up from my earnings during past 4 years.

Answer to Question 18: No, sir. Have had some of my money at interest in Minneapolis, Minn.

**Plaintiff's Exhibit No. 323D.**

Testimony of Patrick H. Downs, on final proof.  
Dated November 13, 1901.

**Plaintiff's Exhibit No. 323E.**

Receiver's Receipt No. 1977, dated July 26, 1902.

**Plaintiff's Exhibit No. 323F.**

Final Receipt No. 1977, dated July 26, 1902.

**Plaintiff's Exhibit No. 323G.**

Cross-examination of witness, Henry A. Snow, at final proof.

**Plaintiff's Exhibit No. 323H.**

Testimony of witness, Henry A. Snow, at final proof.

**Plaintiff's Exhibit No. 323I.**

Cross-examination of witness, Julia M. Anderson, on final proof.

**Plaintiff's Exhibit No. 323J.**

Testimony of witness, Julia M. Anderson, on final proof.

**Plaintiff's Exhibit No. 323K.**

AFFIDAVIT OF P. H. DOWNS, IN RE POST-  
PONEMENT DATE OF MAKING PROOF.

“DEPARTMENT OF THE INTERIOR,

United States Land Office.

Boise, Idaho, November 13, 1901.

Patrick H. Downs, being first duly sworn, deposes

and says that he is the identical Patrick H. Downs who made Timber and Stone Sworn Statement No. 204, at the Boise, Idaho, Land Office, on August 17, 1901, for the N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 17, Tp. 7 N., R. 5 E., on which final proof was advertised to be made November 5, 1901; that he was unable to appear and offer proof on said day because he had his money out at interest in Minneapolis, Minn., and was unable to collect it so as to make payment for this land before this 13th day of November, 1901.

P. H. DOWNS.

Subscribed and sworn to before me this 13th day of November, 1901.

EDWARD E. GARRETT,  
Receiver.

**Plaintiff's Exhibit No. 323L.**

Patent dated Feb. 1st, 1904, to P. H. Downs, for land described in Exhibit No. 323B.

**Plaintiff's Exhibits Nos. 324A to 324N.**

**Plaintiff's Exhibit No. 324B.**

WILLIAM F. SNOW: Residence, Boise, Idaho; occupation, woodsman.

Sworn Statement No. 215, dated and filed Sept. 10, 1901, for entry of West One-half of the Northwest Quarter, West One-half of the Southwest Quarter, Section 22, Tp. 7 North, of Range 5 East, Boise Meridian.

**Plaintiff's Exhibit No. 324A.**

Non-alienation Affidavit.

**Plaintiff's Exhibit No. 324C.**

Non-mineral Affidavit.

**Plaintiff's Exhibit No. 324D.**

Notice for Publication; witnesses for final proof,  
Thomas J. Manning, Patrick H. Downs, Henry A.  
Snow, Charles Hamilton.

**Plaintiff's Exhibit No. 324E.**

AFFIDAVIT OF HENRY A. SNOW, IN RE  
POSTPONEMENT DATE OF MAKING  
FINAL PROOF.

“DEPARTMENT OF THE INTERIOR,  
United States Land Office,

Boise, Idaho, November 30, 1901.

Wm. F. Snow, being first duly sworn, deposes and  
says that he is the identical Wm. F. Snow, who made  
Timber and Stone Sworn Statement No. 215, for the  
W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 22, Tp. 7 N., R.  
5 E., at this office, on September 10, 1901, final proof  
for which was advertised to be made at this office  
on the 21st day of November, 1901; that he was un-  
able to appear and offer proof on said 21st day of  
November, 1901, for the reason that the money with  
which he intended to pay for this land was out at  
interest and he could not obtain possession of it be-  
fore this 30th day of November, 1901.

WM. F. SNOW.

Subscribed and sworn to before me this 30th day  
of November, 1901.

EDWARD E. GARRETT,

Receiver.”



**Plaintiff's Exhibit No. 324F.**

ANSWERS Given by William F. Snow, on Cross-examination, to Questions 16, 17 and 18, on Final Proof.

Answer to Question 16: Yes, sir. Yes, sir.

Answer to Question 17: I saved it from my earnings.

Answer to Question 18: Not in last six months, prior had some deposited with Farmers' & Mechanics' Bank at Minneapolis. I have had some money loaned to a friend and have just succeeded in getting repayment.

**Plaintiff's Exhibit No. 324G.**

Testimony of William F. Snow on final proof.  
Dated Nov. 30th, 1901.

**Plaintiff's Exhibit No. 324H.**

Cross-examination of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibit No. 324 I.**

Testimony of witness, Patrick H. Downs, on final proof.

**Plaintiff's Exhibit No. 324J.**

Cross-examination of witness, James H. Hamilton, on final proof.

**Plaintiff's Exhibit No. 324K.**

Testimony of witness, James H. Hamilton, on final proof.

**Plaintiff's Exhibit No. 324L.**

Receiver's Receipt, No. 2123, dated Oct. 14, 1902.

**Plaintiff's Exhibit No. 324M.**

Final Certificate No. 2123, dated Oct. 14, 1902.

**Plaintiff's Exhibit No. 324N.**

Patent dated Feb. 1st, 1904, to William F. Snow,  
for land described in Exhibit 324B.

**Plaintiff's Exhibits Nos. 325A to 325C.****Plaintiff's Exhibit No. 325A.**

LETTER OF EDWARD E. GARRETT, RE-  
CEIVER, TO COMMISSIONER G. L. O.,  
IN RE APPLICATION OF ARTHUR AN-  
DERSON.

“DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.

Boise, Idaho, August 10, 1905.

UNITED STATES,

vs.

ARTHUR ANDERSON.

Involving timber and stone application for the E.  $\frac{1}{2}$   
NW.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$  Sec. 15, T. 7 N., R.  
5 E., B. M., No. 226.

Honorable Commissioner,

General Land Office,

Washington, D. C.

Sir:—Notice of Departmental decision of May 24,  
1905, in the above-entitled case, promulgated by  
your letter ‘p’ of June 3, 1905, was given Frank  
Martin, Esq., personally, on June 13, 1905, as attor-  
ney for the interested party. No motion for review  
has been filed.

The said Arthur Anderson, through his said attorney, Frank Martin, has filed the enclosed waiver of right to apply for rehearing or review in the case, and relinquishment of all rights to the land involved.

Simultaneous with the filing of said waiver which was presented by said attorney, there was presented the timber and stone application of Leon S. Simpson for said tract of land. This office suspended action on the said timber and stone application pending the closing of such case, under rule 53 of Practice.

Very respectfully,

EDWARD E. GARRETT,  
Receiver."

**Plaintiff's Exhibit No. 325B.**

LETTER OF EDWARD E. GARRETT, RECEIVER, TO COMMISSIONER G. L. O., IN RE APPLICATION OF JAMES T. BALL.

"DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.

Boise, Idaho, August 10, 1905.

UNITED STATES,

vs.

JAMES T. BALL.

Involving timber and stone sworn statement No. 228, for SW.  $\frac{1}{4}$  Sec. 13, T. 7 N., R. 5 E., B. M. Honorable Commissioner,  
General Land Office,  
Washington, D. C.

Sir:—Notice of Departmental decision of May 24,

1905, in the above-entitled case, promulgated by your letter 'p' of June 3, 1905, was given Frank Martin, Esq., attorney for the Interested party, personally, on June 13, 1905. No motion for review has been filed.

The said James T. Ball, through his said attorney, Frank Martin, has filed the enclosed waiver of right to apply for rehearing or review in the case, and relinquishment of all rights to the land involved.

Simultaneous with the filing of said waiver which was presented by said attorney, there was presented the timber and stone application of Eleanor A. Phelps for said tract of land. This office suspended action on the said timber and stone application pending the closing of such case, under Rule 53 of Practice.

Very respectfully,

EDWARD E. GARRETT,

Receiver."

**Plaintiff's Exhibit No. 325C.**

LETTER FROM EDWARD E. GARRETT, RECEIVER, TO COMMISSIONER G. L. O., IN RE APPLICATION OF ABLE EDWARD HUNTER.

"DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.

Boise, Idaho, August 10, 1905.

UNITED STATES,

vs.

ABLE EDWARD HUNTER.

Involving timber and stone sworn statement No.  
227, C. E., No. 1984, for SE.  $\frac{1}{4}$ , Sec. 14 T. 7 N.,  
R. 5 E., B. M.

Honorable Commissioner,  
General Land Office,  
Washington, D. C.

Sir:—Notice of Departmental decision of May 24, 1905, in the above-entitled case, promulgated by your letter 'p' of June 3, 1905, was given Frank Martin, Esq., attorney for the interested party, personally, on June 13, 1905. No motion for review has been filed.

The said Able Edward Hunter, through his said attorney, Frank Martin, has filed the enclosed waiver of right to apply for rehearing or review in the case, and relinquishment of all rights to the land involved.

Simultaneous with the filing of said waiver which was presented by said attorney, there was presented the timber and stone application of Lorenzo D. Martin for said tract of land. This office suspended action on the said timber and stone application pending the closing of such case, under Rule 53 of Practice.

Very respectfully,  
EDWARD E. GARRETT,  
Receiver."

**Plaintiff's Exhibit No. 326.**

Certified copies of Articles of Incorporation, designation of agent, and amendment to Articles of Incorporation of the Barber Lumber Company, Incorporated, July 9, 1902, under the laws of Wisconsin.

sin. Incorporators, J. T. Barber, S. G. Moon, C. W. Lockwood. April 10, 1903, Barber Lumber Company, by J. T. Barber, President. Attested by S. G. Moon, Secretary, designated John M. Haines as its authorized agent in the State of Idaho.

May 13, 1903, certified copy of said Articles of Incorporation filed in said office, Secretary of State for Idaho.

**Complainant's Exhibits Long "A" to Long "F."**

**Complainant's Exhibit Long "A."**

Letter from James T. Barber to Mr. George S. Long.

(Copied in record at page 2941)

**Complainant's Exhibit Long "B."**

Letter from George S. Long to Mr. James T. Barber.

(Copied in record at page 2942)

**Complainant's Exhibit Long "C."**

Letter from L. G. Chapman to Mr. George S. Long.

(Copied in record at page 2944)

**Complainant's Exhibit Long "D."**

Letter from George S. Long to Mr. L. G. Chapman.

(Copied in record at page 2945)

**Complainant's Exhibit Long "E."**

Letter from L. G. Chapman to Mr. George S. Long.

(Copied in record at page 2946)

**Complainant's Exhibit Long "F."**

Letter from George S. Long to Barber Lumber Company.

(Copied in record at page 2947)



**Plaintiff's Exhibit Harry B. Noble No. 1.**

HARRY NOBLE: Residence, Boise, Idaho; occupation, student.

Sworn Statement No. 1058, dated and filed Sept. 14, 1903, for entry of Southwest Quarter of Section 28, Tp. 6 North of Range 4 East, Boise Meridian.

Notice for Publication; witnesses for final proof, John K. Woodburn, Lorin T. Kinert, Charles B. Faraday, and Rice J. Harbaugh.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Harry B. Noble, on final proof, dated December 24, 1903.

ANSWERS Given to Questions 16, 17 and 18 on  
Cross-examination at Final Proof.

Answer to Ques. 16: Yes.

Answer to Ques. 17: Money was inherited from my father; have had money 4 or 5 years.

Answer to Ques. 18: Capital State Bank, Boise, Idaho.

Testimony of witness, Lorin T. Kinert, on final proof.

Cross-examination of witness, Lorin T. Kinert, on final proof.

Testimony of witness, John K. Woodburn, on final proof.

Cross-examination of witness, John K. Woodburn, on final proof.

Receiver's Receipt No. 2802, dated December 24, 1903.

Final Certificate No. 2802, dated Dec. 24, 1903.

Deed from Harry B. Noble to George S. Long, dated February 4, 1904; consideration, \$800.00; acknowledged before W. L. Payne, Notary Public, and filed for record at the request of W. E. Borah, July 1st, 1904. Conveys land described in Sworn Statement, Exhibit Harry B. Noble No. 1.

Patent to Harry B. Noble, dated 1st day of December, 1904, for land described in Sworn Statement of Exhibit Harry B. Noble No. 1.

**Plaintiff's Exhibit A. B. Ewing No. 1.**

ALBERT B. EWING: Residence, Boise, Idaho; occupation, merchant.

Sworn Statement No. 496, dated and filed Aug. 11, 1902, for entry of Lots 3 and 4, and East One-half of the Southwest Quarter, Section 7, Tp. 7 North of Range 6 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Robert E. Heel, Wm. Humphrey, George S. Warren, John I. Wells.

Affidavit for Publication.

Non-mineral Affidavit.

Testimony of Albert B. Ewing, on final proof, dated November 7th, 1902.

ANSWERS Given by Albert B. Ewing, to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Ques. 16: I did, and I do.

Answer to Ques. 17: 6 or 7 years; sale of real estate.

Answer to Ques. 18: Yes, at Mankato, Minnesota National Bank, First National Bank, Boise, Idaho.

Testimony of witness, William Humphrey, on final proof.

Testimony of witness, George S. Warren, on final proof.

Receiver's Receipt No. 2153, dated November 7, 1902.

Final Certificate No. 2153, dated Nov. 7, 1902.

Patent dated May 24, 1904, to Albert B. Ewing, for land described in Exhibit A. B. Ewing No. 1 Sworn Statement.

**Plaintiff's Exhibit Beckley No. 1.**

MANTIE BECKLEY: Residence, Boise, Idaho; occupation, housewife.

Sworn Statement No. 650, dated and filed Oct. 3rd, 1902, for entry of Southwest Quarter of Section 22, Tp. 7 North of Range 8 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Joseph Sullivan, Patrick H. Downs, Elizabeth Schmelzel, Helen Sullivan.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Mantie Beckley, on final proof, dated February 12, 1903.

ANSWERS Given by Mantie Beckley, to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Ques. 16: Yes. I do.

Answer to Ques. 17: My husband gave it to me.

Answer to Ques. 18: No.

Non-alienation Affidavit.

Testimony of witness, Joseph Sullivan, on final proof.

Cross-examination of witness, Joseph Sullivan, on final proof.

Testimony of Elizabeth Schmelzel, witness on final proof.

Cross-examination of Elizabeth Schmelzel, witness on final proof.

Receiver's Receipt No. 2303, dated Feb. 12, 1903.

Final Certificate No. 2303, dated Feb. 12, 1903.

Certificate of Register and Receiver in re discrepancy between date of final proof and Receiver's Receipt, and Register's Certificate.

Patent to Mantie Beckley, dated June 10, 1904, for land described in Sworn Statement of Plaintiff's Exhibit, Beckley No. 1.

### **Plaintiff's Exhibit Beckley No. 2.**

CHARLES R. BECKLEY: Residence, Boise, Idaho; occupation, lumberman.

Sworn Statement No. 652, and dated and filed Oct. 3d, 1902, for entry of North One-half of the Northwest Quarter, and Southwest Quarter of the Northwest Quarter, and Northwest Quarter of the Southwest Quarter, of Section 26, Tp. 7 North of Range 8 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Joseph Sullivan, Patrick H. Downs, Elizabeth Schmelzel, Helen Sullivan.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Charles R. Beckley, on final proof, dated February 12, 1903.

ANSWERS Given by Charles R. Beckley to Ques-

tions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Ques. 16: Yes.

Answer to Ques. 17: My lumber business; three years.

Answer to Ques. 18: Yes, Capital State Bank, Boise, Idaho.

Testimony of witness, Elizabeth Schmelzel, on final proof.

Cross-examination of witness, Elizabeth Schmelzel, on final proof.

Testimony of witness, Joseph Sullivan, on final proof.

Cross-examination of witness, Joseph Sullivan, on final proof.

#### AFFIDAVIT.

“UNITED STATES LAND OFFICE,

Boise, Idaho, February 12, 1903.

Charles R. Beckley, being first duly sworn, deposes and says:

That he is the identical person who made timber and stone sworn statement #652 at this office on October 3d, 1902, for the purchase of the N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , and NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 26, Tp. 7 N., R. 8 E., B. M., and who advertised to offer proof on the 11th day of February, 1903; that the reason he did not appear on said 11th day of February, 1903, to offer proof was that he did not have the money for his proof and his wife's proof, and as they had the same witnesses they wanted to offer proof at the same time.

CHARLES R. BECKLEY.

Subscribed and sworn to before me this 12th day of February, 1903.

HARRY J. SYMS,  
Register."

Receiver's Receipt No. 2302, dated Feb. 12, 1903.

Final Certificate No. 2302, dated Feb. 12, 1903.

Deed from Charles R. Beckley and Mantie, to Horace S. Rand; consideration \$1600.00; dated Feb. 13, 1903; acknowledged before L. M. Pritchard, Notary Public, and filed for record at the request of W. E. Borah, July 1st, 1904. Conveys land described in Exhibits, Beckley No. 1 and 2, Sworn Statements.

Patent to Charles R. Beckley, dated June 10, 1904, for land described in Sworn Statement of Exhibit Beckley No. 2.

**Complainant's Exhibits Henry Humphrey No. 1.**

HENRY HUMPHREY: Residence, Boise, Idaho; occupation, merchant.

Sworn Statement No. 369, dated and filed April 29, 1902, for entry of East One-half of the Northwest Quarter Section 28, and the East One-half of Southwest Quarter, Section 21, Tp. 7 North of Range 5 East, Boise Meridian.

Notice for Publication; witnesses for final proof, John W. Williams, Patrick H. Downs, Roy Dye, Gertrude Lewin.

Notice for Publication; witnesses for final proof, John W. Williams, Patrick H. Downs, Roy Dye, Gertrude Lewin.

Affidavit of Publication.

Affidavit of Re-publication.



Non-mineral Affidavit.

Testimony of Henry Humphrey, at final proof, dated July 17, 1902.

ANSWERS Given by Henry Humphrey to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Ques. 16: Yes.

Answer to Ques. 17: I got it from Minnesota from where I formerly lived. Ten years.

Answer to Ques. 18: Yes, since March, 1902, at 1st Natl. Bank, Boise, Idaho, prior to that in Minnesota.

Testimony of witness, John W. Williams, on final proof.

Testimony of witness, Roy Dye, on final proof.

Receiver's Receipt No. 1935, July 17, 1902.

Final Certificate dated July 17, 1902, No. 1935.

Deed Henry Humphrey and wife to A. E. Palmer dated Nov. 12, 1903; consideration \$650.00; acknowledged before L. M. Pritchard, N. P., and filed for record June 27, 1904, at the request of W. E. Borah. Conveys land described in Exhibit, Henry Humphrey No. 1, Sworn Statement.

Patent to Henry Humphrey, dated Dec. 29, 1904, for land described in Sworn Statement of Exhibit Henry Humphrey No. 1.

**Complainant's Exhibit Willard C. Austin No. 1.**

WILLARD C. AUSTIN: Residence, Boise, Idaho; occupation, miner.

Sworn Statement No. 944, dated and filed July 10, 1903, for entry of North One-half of the Southwest Quarter, Southwest Quarter of the Southwest Quar-

ter of Section 22, and Northeast Quarter of the Southeast Quarter of Section 21, Tp. 7 North of Range 7 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Samuel S. Horner, Hortense D. Horner, Ada V. Austin, Patrick H. Downs.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Willard C. Austin, at final proof.  
Dated Oct. 13, 1903.

ANSWERS Given by Willard C. Austin, at Final Proof, on Cross-examination, to Questions 16, 17 and 18.

Answer to Question 16: I did and I do.

Answer to Question 17: Earned it; have an account with the bank.

Answer to Question 18: Yes, with the Bank of Commerce, Boise, Idaho.

Testimony of witness, Samuel S. Horner, at final proof.

Cross-examination of witness, Samuel S. Horner, at final proof.

Testimony of witness, Hortense D. Horner, at final proof.

Cross-examination of witness, Hortense D. Horner, at final proof.

Receiver's Receipt No. 2645, dated Oct. 13, 1903.

Final Certificate No. 2645, dated Oct. 13, 1903.

Deed from Willard C. Austin, and Ada V. Austin, to Horace S. Rand, dated Nov. 6, 1903; consideration \$1600.00; acknowledged before L. M. Pritchard. N. P., and filed for record at the request of W. E.

Borah, July 1st, 1904, conveying land described in Complainant's Exhibit Willard C. Austin No. I, and Exhibit No. 226, Sworn Statement therein.

Patent to Willard C. Austin, dated Sept. 9, 1904, for land described in Exhibit Willard C. Austin, No. 1.

**Complainant's Exhibit Lettie L. Stephenson No. 1.**

LETTIE L. STEPHENSON: Residence, Boise, Idaho; housewife.

Sworn Statement No. 304, dated and filed December 24, 1901, for entry of Southeast Quarter of Section 34, Tp. 7 North of Range 5 East, Boise Meridian.

Notice for Publication; witnesses for final proof, A. Brookhart, Charles Wilmot, Fred McBurney, and James Baker.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Lettie L. Stephenson, on final proof, dated March 13th, 1902.

ANSWERS Given by Lettie L. Stephenson to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Question 16: Yes, sir. Yes, sir.

Answer to Question 17: From my father, he gave it to me. I have had it in my possession several months. My father's name is Frank Brookhart, he lives in Boise.

Answer to Question 18: No, sir.

Testimony of witness, Arthur E. Brookhart, at final proof.

Cross-examination of witness, Arthur E. Brookhart, at final proof.

Testimony of Uriah Frederick McBurney, on final proof. Witness.

Cross-examination of witness, Uriah Frederick McBurney, on final proof.

Receiver's Receipt No. 1944, dated July 18, 1902.

Final Certificate No. 1944, dated July 18, 1902.

Affidavit of Arthur E. Brookhart, and Lettie L. Stephenson, correcting the name of Arthur E. Brookhart.

Non-alienation Affidavit.

Certificate of Register and Receiver, in re discrepancy between date of proof, and Register's Certificate and Receiver's Receipt.

Report of Register and Receiver in re report of Lettie L. Stephenson.

Certified Copy of Patent, dated March 17, 1904, to Lettie L. Stephenson to land described in Sworn Statement in Exhibit L. L. Stephenson No. 1.

Patent to Lettie L. Stephenson, dated March 17, 1904, for land described in Sworn Statement Exhibit Lettie L. Stephenson No. 1.

**Complainant's Exhibit Martin S. Stephenson No. 1.**

MARTIN S. STEPHENSON: Residence, Boise, Ida.; occupation, teamster.

Sworn Statement No. 305, dated and filed Sept. 24, 1901, for entry of East One-half of the Northeast Quarter Section 33 and West One-half of the Northwest Quarter Section 34, Tp. 7 North of Range 5 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Art. Brookhart, Charles Wilmot, Fred McBurney, and James Baker.

Non-mineral Affidavit.

Testimony of Martin S. Stephenson, on final proof. Dated March 14, 1902.

ANSWERS Given by Martin S. Stephenson to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Question 16. Yes, sir. Yes, sir.

Answer to Question 17. I got it differently, part out of the livery business and part for freighting, I borrowed none. Some since 1st of year and some longer.

Answer to Question 18. No, sir, I kept my money at Regan's store at different times.

Testimony of witness, Arthur E. Brookhart, on final proof.

Cross-examination of witness, Arthur E. Brookhart, on final proof.

Testimony of witness, Uriah Frederick McBurney, on final proof.

Cross-examination of witness, Uriah Frederick McBurney, on final proof.

Final Certificate No. 1945, dated July 18, 1902.

Receiver's Receipt No. 1945, dated July 18, 1902.

Non-alienation Affidavit.

Deed from Martin S. Stephenson and Lettie L. Stephenson, to A. E. Palmer, dated Sept. 15, 1903, consideration \$2,000.00, acknowledged before L. M. Pritchard, N. P., and filed for record June 27, 1904, at the request of W. E. Borah, conveying lands em-

braced in Exhibit Martin L. Stephenson, No. 1 and Lettie L. Stephenson, No. 1. Sworn Statement therein.

Certified copy of patent dated March 17, 1904.

Patent to Martin S. Stephenson, dated March 17, 1904, for land described in Complainant's Exhibit Martin S. Stephenson, No. 1. Sworn Statement therein.

**Complainant's Exhibits A. J. Foster No. 1.**

Letter from A. J. Foster to A. B. Campbell, dated, Tacoma, Wash., October 27, 1902.

Copied in record at page 3241.

Letter from W. A. Richards, Acting Commissioner, G. L. O., to A. G. Foster, dated Washington, D. C., September 2, 1902.

Copied in record at page 3242.

**Complainant's Exhibit Frank Lane No. 1.**

FRANK LANE: Residence, Boise, Ida.; occupation, miner.

Sworn Statement No. 354, dated and filed April 4, 1902, for entry of East One-half of the Northwest Quarter and East One-half of the Southwest Quarter Section 35, Tp. 8 North of Range 5 East, Boise Meridian.

Notice for Publication; witnesses for final proof, William Roberts, James Baker, John I. Wells and Patrick H. Downs.

Affidavit of Publication.

Non-mineral Affidavit.



Testimony of Frank Lane on final proof. Dated July 7th, 1902.

ANSWERS Given by Frank Lane to Questions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Question 16. Yes, sir. Yes, sir.

Answer to Question 17. I had part of it and part I borrowed from my brother W. C. Lane, of Boise. I borrowed \$200.00 from him this morning. The balance I had about 6 months.

Answer to Question 18. No, sir.

Testimony of witness, John I. Wells, on final proof.

Cross-examination of witness, John I. Wells, on final proof.

Testimony of witness, Patrick H. Downs, on final proof.

Cross-examination of witness, Patrick H. Downs, on final proof.

Receiver' Receipt, No. 1899, dated July 7, 1902.

Final Certificate No. 1899, dated July 7, 1902.

Deed from Frank Lane and wife to A. E. Palmer, dated March 14, 1902, consideration \$1,000.00, acknowledged before L. M. Pritchard, N. P., and filed for record at the request of W. E. Borah, Feb. 17, 1904. Conveys land described in Exhibit Frank Lane No. 1, Sworn Statement.

Patent to Frank Lane, dated Jan. 28, 1904, for land described in Sworn Statement, Exhibit Frank Lane No. 1.

**Complainant's Exhibit Aaron Ownbey No. 1.**

AARON OWNBEY: Residence, Boise, Idaho; occupation, farmer.

Sworn Statement No. 558, dated and filed Sept. 6th, 1902, for entry of South One-half of the Southeast Quarter, and East One-half of the Southwest Quarter of Section 9, Tp. 7 North of Range 8 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Patrick H. Downs, E. H. Starn, John Youngkin, and Mrs. Mary Starn.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Aaron Ownbey, at final proof, dated December 18, 1902.

ANSWERS Given by Aaron Ownbey, to Questions 16, 17 and 18, on Cross-examination at Final Proof.

Answer to Ques. 16: Yes.

Answer to Ques. 17: The money is what I have saved from my income as farmer and from toll roads. I collected part of it yesterday from parties owing me; have had more than that amount several years.

Answer to Ques. 18: Yes, Bank of Commerce, Boise, Idaho.

Testimony of witness, E. H. Starn, on final proof.

Testimony of witness, Patrick H. Downs.

Receiver's Receipt No. 2223, dated Dec. 18, 1902.

Final Certificate No. 2223, dated Dec. 18, 1902.

Patent to Aaron Ownbey, dated May 13, 1904, for land described in Sworn Statement, Exhibit Aaron Ownbey, No. 1.

**Plaintiff's Exhibits No. ———.**

Northern Pacific Land List No. 1

Northern Pacific Land List No. 2.

Copied in full in Record, pages 3455-3465.

**IN TESTIMONY OF**

William F. Von Duyn.    Send up originals.

Defense Exhibit Junius Wright No. 1 was not filed.

**Complainant's Exhibit John I. Wells No. 2.**

JOHN I. WELLS: Residence, Centerville, Idaho; occupation, miner.

Sworn Statement No. 219, dated and filed Sept. 20, 1901, for entry of Northwest Quarter of Section 14, Tp. 7 North of Range 5 East, Boise Meridian.

Notice for Publication; witnesses for final proof, Frank Goldtrap, H. H. Wells, Arthur Anderson, and H. C. Granger.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of John I. Wells, at final proof, dated December 12th, 1901.

ANSWERS Given by John I. Wells to Questions 16, 17 and 18 on Cross-examination, at Final Proof.

Answer to Ques. 16: Yes, sir.

Answer to Ques. 17: Earned it and saved it from

my labor and locating, some of it 6 or 7 months, some not so long.

Answer to Ques. 18: No, sir. In Centerville, I kept my money in private safe, have had money recently with First Natl. Bank, at Boise, Idaho.

Testimony of witness, Homer C. Granger, on final proof.

Cross-examination of witness, Homer C. Granger, on final proof.

Testimony of witness, Arthur Anderson, on final proof.

Cross-examination of witness, Arthur Anderson, on final proof.

Certificate of Register and Receiver, in re postponement making date of final proof.

Affidavit of John I. Wells, in re postponement date of final proof.

Report of Register and Receiver in re entry of John I. Wells.

Receiver's Receipt No. 3025, dated June 22, 1904.

Final Certificate No. 3025, dated June 22, 1904.

Deed from John I. Wells, and wife, to the Barber Lumber Co., Oct. 8, 1906; consideration \$800.00; acknowledged before John J. Blake, Conveys land described in Exhibit John I. Wells, No. 2 Sworn Statement therein.

**Complainant's Exhibit L. M. Pritchard No. 1.**

LOUIS M. PRITCHARD: Residence, Boise, Idaho; occupation, lawyer.

Sworn Statement No. 330, dated and filed March 21st, 1902, for entry of Northwest Quarter of Sec-

tion 20, Tp. 6 North of Range 6 East, Boise Meridian.

Notice for Publication; witnesses for final proof, G. H. Ensworth, S. M. Blandford, A. R. Flanders, and Patrick H. Downs.

Affidavit of Publication.

Non-mineral Affidavit.

Testimony of Louis M. Pritchard, at final proof, dated June 11th, 1902.

ANSWERS Given by Louis M. Pritchard, to Questions 16, 17 and 18, on Cross-examination, at Final Proof.

Answer to Ques. 16: Yes, I do.

Answer to Ques. 17: Out of my business transactions; I have had a portion of it since filing sworn statement and balance at different times since.

Answer to Ques. 18: I have not until a few days ago. I gathered my money together and deposited at Boise, Idaho.

Testimony of witness, George H. Ensworth, on final proof.

Cross-examination of witness, George H. Ensworth, on final proof.

Testimony of witness, P. H. Downs, on final proof.

Cross-examination of witness, P. H. Downs, on final proof.

Receiver's Receipt No. 1841, dated June 13, 1902.

Final Certificate No. 1841, dated June 13, 1902.

Deed from Louis M. Pritchard to A. E. Palmer, dated March 19, 1903; consideration \$1,000.00; acknowledged before Benjamin H. McCrew, N. P., and filed for record Feb. 29, 1904, at the request of W.

E. Borah. Conveys land described in Exhibit Louis M. Pritchard, No. 1, Sworn Statement thereof.

Patent to Louis M. Pritchard, dated Jan. 28, 1904, for land described in Sworn Statement of Exhibit Louis M. Pritchard No. 1.

**Complainant's Exhibit Harvey H. Wells No. 1, 2  
and 3.**

HARVEY H. WELLS: Residence, Centerville, Idaho; occupation miner.

**Complainant's Exhibit Harvey H. Wells No. 1.**

AFFIDAVIT OF HARVEY H. WELLS, IN RE  
POSTPONEMENT DATE OF MAKING  
FINAL PROOF.

“DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE.

Boise, Idaho, December 10, 1901.

Harvey H. Wells, being first duly sworn, deposes and says that he is the identical Harvey H. Wells who made Timber and Stone Sworn Statement No. 224, at this office on September 24, 1901, for SW.  $\frac{1}{4}$  Sec. 14, Tp. 7 N., R. 5 E., on which final proof was advertised to be made December 5, 1901; that he was unable to appear and offer proof on that day or on any of the subsequent days until this 10th day of December, 1901, for the reason that the money with which he expected to pay for this land was not at hand and could not be got in before today.

HARVEY H. WELLS,

Subscribed and sworn to before me this 10th day  
of December, 1901.

EDWARD E. GARRETT,

Receiver.”



**Complainant's Exhibit Harvey H. Wells No. 2.**

Testimony of Harvey H. Wells, and answers to Questions 16, 17 and 18, on Final Proof, at Cross-examination.

Answer to Ques. 16: Yes, sir. I do.

Answer to Ques. 17: I obtained the money through my business; had a portion of it for about 5 months.

Answer to Ques. 18: No, there is no bank Center-ville, have kept a safe.

**Complainant's Exhibit Harvey H. Wells No. 3.**

Non-mineral Affidavit of Harvey H. Wells.

**Complainant's Exhibit A. B. Campbell Nos. 1 to 10,  
Inclusive.**

**Complainant's Exhibit A. B. Campbell No. 1.**

Letter from Frank Steunenberg to A. B. Campbell.

(Copied in record at page 3350.)

**Complainant's Exhibit A. B. Campbell No. 2.**

Letter from Frank Steunenberg to Mace.

(Copied in record at page 3351.)

**Complainant's Exhibit A. B. Campbell No. 3.**

Letter from Frank Steunenberg to A. B. Campbell.

(Copied in record at page 3352.)

**Complainant's Exhibit A. B. Campbell No. 4.**

Letter from Frank Steunenberg to A. B. Campbell.

(Copied in record at page 3353.)

**Complainant's Exhibit A. B. Campbell No. 5.**

Letter from Frank Steunenberg to A. B. Campbell.

(Copied in record at page 3354.)

**Complainant's Exhibit A. B. Campbell No. 6.**

Letter from Frank Steunenberg to A. B. Campbell.

(Copied in record at page 3356.)

**Complainant's Exhibit A. B. Campbell No. 7.**

Letter from Frank Steunenberg to A. B. Campbell.

(Copied in record at page 3357.)

**"FIRST NATIONAL BANK OF PAYETTE**

Successor to

**PAYETTE VALLEY BANK.**

Payette, Idaho, Oct. 31, 1902.

Hon. A. B. Campbell,

Spokane, Washington.

My Dear Friend:—

Your valued letter with enclosures at hand yesterday. Any time you can made appointment with Senator Foster, I can come.

This feature of the timber deal is getting into bad shape. Sharp, the inspector. and the local land office people have worked so secretly and used so much deception, even with their friends, that I have not been able to learn the true situation, much less do any work. If not asking too much, wish you would ask Senator Foster to hold Sharpe off until I can meet the Senator.

You had better wire me at Caldwell, date of meeting.

Sincerely,

**FRANK STEUNENBERG."**

**Complainant's Exhibit A. B. Campbell No. 8.**

Letter from Frank Steunenberg to (A. B. Campbell) Mace.

(Copied in record at page 3358.)

**Complainant's Exhibit A. B. Campbell No. 9.**

Letter from Frank Steunenberg to Mace.

(Copied in record at page 3360.)

**Complainant's Exhibit A. B. Campbell No. 10.**

Letter from A. B. Campbell to Frank Steunenberg.

(Copied in record at page 3345.)

**Plaintiff's Exhibit ———**

**CHAPMAN & RAND LETTERS.**

(Copied in the record at pages 2477, et seq.)

Letter from L. G. Chapman, Manager, to H. S. Rand, dated May 22, 1905.

Letter from H. S. Rand to L. G. Chapman, dated June 17th, 1905.

Letter from L. G. Chapman to H. S. Rand, dated June 27th, 1905.

Letter from H. S. Rand to L. G. Chapman, dated July 8th, 1905.

Letter from L. G. Chapman, Manager, to Mr. Horace S. Rand, dated July 20th, 1905.

**Complainant's Exhibit No. 1 Frank Martin.**

Offered at page 2688, of record.

Check from Frank Martin to Frank Steunenberg, amount \$193.65. (Send up original.)

**Plaintiff's Exhibit ———**

Check July 6, 1904, from Frank Steunenberg, Agent, to Frank Martin, for \$100.00. Filed July 2, 1909, read into record at page 2706. (Send up original.)

**Plaintiff's Exhibit** ———

Offered at 3481 etc.

**KINKAID AND FISHER CHECKS.**

5 Checks Kinkaid, et al.

CHECK FRANK STEUNENBERG, AGT., TO  
FIRST NATIONAL BANK OF BOISE,  
AMOUNT \$4,000.00.

“Caldwell, Idaho, Feb. 13, 1903.

No. ———

The Commercial Bank,

Pay to the Order of First National Bk. (Boise)  
\$4000.00 Four Thousand Dollars.

Acct. Kinkaid.

FRANK STEUNENBERG,  
Agt.”

CHECK FRANK STEUNENBERG, TO FIRST  
NATIONAL BANK OF BOISE (PER-  
SONAL) AMOUNT \$1200.00.

“Caldwell, Idaho, Mar. 25, 1903.

No. ———

The Commercial Bank,

Pay to the Order of First Nat. Bk. (Boise)  
\$1200.00 Twelve Hundred Dollars.

Acct. Kinkaid.

FRANK STEUNENBERG,  
Personal.”

CHECK FROM FRANK STEUNENBERG, AGT.,  
TO JOHN KINKAID, AMOUNT \$2155.00.

“Caldwell, Idaho, Feb. 7, 1902.

No. ———

The Commercial Bank,

Pay to the Order of John Kinkaid, \$2155.00,  
Twenty-one Hundred and Fifty-five Dollars.

FRANK STEUNENBERG, Agt.”

Read into record and filed by Clerk but not offered  
and marked as Exhibits. See pages 3841.

**Complainant's Exhibit John I. Wells No. 1.**

CHECK FOR \$20.00, MAY 15, 1902, TO JOHN I.  
WELLS, DRAWN BY FRANK STEUNEN-  
BERG.

“Caldwell, Idaho, May 15, 1902.

No. ———

The Commercial Bank,

Pay to the order of John I. Wells, \$20.00, Twenty  
Dollars.

FRANK STEUNENBERG.”

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*In the United States Circuit Court for the District  
of Idaho.*

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY et al.,

Defendants.

**Notice.**

PLEASE TAKE NOTICE that the defendant, Barber Lumber Company, has filed a Motion in the above-entitled action, a copy of which Motion is hereto attached and herewith served upon you; and that said defendant will bring said Motion on for a hearing before the said Court at the opening of Court on the 12th day of July, 1909, or at soon thereafter as counsel can be heard.

YOU WILL PLEASE TAKE FURTHER NOTICE, that hereto attached and herewith served upon you is a classification of the entries made by the various entrymen and entrywomen named in the Bill of Complaint in the above-entitled action, as the defendants will contend on the trial of said action, and you are respectfully requested to serve upon the undersigned at, or before the argument of said cause, any corrections in such classification, which, in your opinion, should be made.

Dated June 30th, 1909.

C. T. BUNDY,  
A. A. FRASER,

Solicitors for Defendants.

To the Hon. Peyton Gordon and Charles A. Keigwin,  
Solicitors for Complainant.



*United States Circuit Court, for the District of  
Idaho.*

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY et al.,

Defendants.

**Motion to Strike Out Evidence.**

Comes now the above-named defendant, Barber Lumber Company, and upon the record in the above-entitled action, and the objections heretofore taken, and moves the Court to strike out all of the following evidence offered on the part of the complainant and received by the various examiners before whom such evidence was taken against the objection of this defendant.

1. All the evidence offered by the plaintiff with reference to the manner in which the various entrymen and entrywomen called as witnesses procured his or her money with which to make final proof, together with all evidence relative to the proceedings had and taken by such entrymen before the land office at the time of making and submitting final proof; and all evidence of applicant, cross-examination of applicant, and testimony of witnesses taken before the land office at the time of making final proof; all of which evidence was received subject to the objection of the defendant, that same was incompetent, irrelevant, and immaterial. Pages 7-8, Record.

2. All evidence relating to entries made by entry-

men and entrywomen on lands not specified or mentioned in the bill of complaint herein; all of which evidence was received subject to the objection of the defendant; and the same is incompetent, irrelevant, and immaterial.

3. All evidence relating to filings made and final proof submitted by the various entrymen and entrywomen prior to April 10, 1902.

4. All evidence of witnesses, and all documents and records of the land office and the department of the interior offered and received as evidence relating to entries made by Arthur Anderson, Harvey Wells, James T. Ball, Abel E. Hunter, and Albert Nugent; and all such evidence and documents relating to appeals taken by Arthur Anderson, Jas. T. Ball, Harvey Wells, and Abel E. Hunter, from the decisions of the local land office holding the entries for cancellation; all of which evidence was received subject to the defendant's objection, that the same is incompetent, irrelevant, and immaterial.

5. All of the evidence of L. L. Sharp with reference to reports made by him to the Department at Washington, or relating to protests filed with the Department, for the reason, and upon the ground that the defendant demanded the production of such reports during the examination of said witness, Sharp; and demanded that said witness be produced for cross-examination with reference to such reports and protests, which demand was refused and the said Sharp was not recalled for cross-examination, and said reports and protests with reference to which he testified, were not produced by the Government,

although it affirmatively appears from certain of said witnesses, that such documents were filed with the Department of the complainant, at Washington. Pages 796-890.

6. All that portion of the evidence of Nelson Botcher, a witness called on behalf of the plaintiff, with reference to statements made to him by plaintiff's witness, Arthur Anderson, and others; for the reason that the said evidence was offered for the purpose of impeaching the plaintiff's witness, Arthur Anderson, and was otherwise incompetent, irrelevant, and immaterial, all of which was received subject to the defendant's objection. Page 2433, Red.

7. All that portion of the evidence of the witness, Ponchia, called by the complainant for the purpose of impeaching the plaintiff's witness, Arthur Anderson, with reference to his condition at the time of making a certain affidavit, which affidavit was offered by the complainant for the purpose of impeaching its said witness, Arthur Anderson, and all of which was received subject to the objections of the defendant. Page 2466, Red.

8. All evidence of witnesses Fred Brown, Robert McAfee, and M. F. Miholia, to the effect that certain of plaintiff's witnesses who testified to having a bank account in certain banks at certain times, had testified falsely on that subject, which evidence was offered by the plaintiff and received for the purpose of impeaching other witnesses called by the plaintiff, and was otherwise incompetent, irrelevant, and immaterial. Pages 2659-2665.

9. All evidence consisting of typewritten state-

ments purporting to be statements of various witnesses called by the plaintiff, made by such witnesses before a grand jury, and before Norman H. Ruick, United States District Attorney, and Mr. Johnson, Assistant United States District Attorney, at various times, out of Court, which evidence was offered by the complainant, and received against the defendant's objections for the purpose of impeaching witnesses called on the part of the complainant.

10. All that evidence of witness Junius Wright, called by plaintiff, shown page                      to page                      on Record, wherein said witness attempted to testify to a conversation had between him and John I. Wells, during January or February of 1905, for the reason that such evidence is incompetent, irrelevant, and immaterial, constituting an alleged admission by one of the alleged conspirators subsequent to the termination of the conspiracy charged in the complaint.

11. All the evidence of witness George P. Wheeler, called in behalf of the complainant, for the reason that the same is incompetent, irrelevant, and immaterial. Page 2165.

12. The evidence of witness Max Taylor, called on the part of the complainant, together with all extracts from the "Daily Statesman," a newspaper, offered in connection with the evidence, for the reason that the same was incompetent, irrelevant, and immaterial, and was received subject to such objection on the part of the defendant.

13. All opinions and decisions rendered by the local land office at Boise, the Commissioner of the General Land Office, and Secretary of the Interior,

in the matter of entries not specified or embraced in the complaint in the action.

14. The evidence of all witnesses called by the complainant, who are alleged in the bill of complaint to having made entries under the Timber and Stone Act, and who testified to have made such entries, for the reason and upon the ground that it affirmatively appears that all of such entries were made in strict compliance with the law; and that such evidence is incompetent, irrelevant, and immaterial, and does not tend to substantiate any allegation of the complainant.

15. The evidence of the following witnesses called by the plaintiff, with reference to the timber and stone entries made by them respectively, none of which are involved in this action, namely: Lola T. Thurman, Susan N. Arbuckle, Charles Arbuckle, John Keene, Arthur Anderson, Albert Nugent, William J. Wills, G. D. Hosler, Dora C. Burns, G. G. Gibson, H. T. James, Wm. R. Humphrey, Henry A. Snow, Mrs. Nettie Weston, Leon S. Simpson, Mrs. Mary J. Martin, Eleanor E. Phelps, and Frank Martin, together with the land office filed in the matter of timber and stone entries of the following named persons, namely: Harvey Wells, James T. Ball, Abel E. Hunter, Albert Nugent, Arthur Anderson, Roy Dye, Kate Hunter and John I. Wells, none of which files relate to lands specified or mentioned in the bill of complaint herein.

16. All letters written by the officials of the local land office, and all letters received by such officer from the Department at Washington relating to



timber and stone entries, not mentioned or described in the complaint herein.

17. All conversations between witness L. L. Sharp, the Special Agent of complainant, and witness E. E. Garrett, relative to timber and stone entries involved in this action, and all such conversations relative to timber and stone entries not involved in this action.

18. All conversations between plaintiff's witness L. L. Sharp, and plaintiff's witness E. C. Foster, and A. B. Campbell, and between said witnesses Foster and Campbell, it appearing that all such conversations were had without the presence of any of the defendants herein, and are therefore incompetent, irrelevant and immaterial.

19. All notations upon checks, or check stubs produced by complainant and which are stipulated to have been drawn and made by Frank Steunenberg, for the reason that such notations are not shown to have been made in the presence of, or with the knowledge and consent of this defendant, or of any of the defendants; and they are therefore incompetent, irrelevant, and immaterial.

20. All evidence offered on the part of the plaintiff to which objection was made at the time the same was offered, which objections are hereby renewed upon the hearing of this motion.

21. All files of the land office relating to each timber and stone entry described and mentioned in the complaint, except Receiver's Final Receipt, Register's Certificate, and Patent relating to each such entry; for the reason and upon the ground that each



of such filings show a compliance with the law in every respect, and are offered for the sole purpose of impeaching the witnesses who signed the same.

22. That portion of the evidence of William W. Abrams, with reference to a conversation had between him and Charles Ballentine, a neighbor, found at page three of the Record.

23. That portion of the evidence of William W. Abrams, with reference to borrowing money with which to make final proof, to which objection was made, and whereupon it was stipulated that such objection should appear to all similar questions. Page 7-8, Rd.

24. That portion of the evidence of plaintiff's witness, Lewis K. Burns, with reference to a conversation had between said witness and one Dean West, found on page 25, Record, and again at page 28, and again at page 32, Record.

25. That portion of the evidence of Dean West on page 60 of the Record, relating to a conversation between the said witness and one Samuel Dye.

26. That portion of the evidence of witness Dean West purporting to state a conversation between said witness and one Charley Nelson. Page 68, Record.

27. That portion of the evidence of plaintiff's witness Charles W. Ballentine, purporting to state a conversation between said witness and one John Nelson. Page 85-88, Record.

28. That portion of the evidence of said witness Ballentine with reference to what amount of money he expected to get for his claim. Page 94.

29. That portion of the evidence of witness Ed. Brisbin, called for the plaintiff, purporting to state a conversation with one Henry Rice. Page 138-9.

30. That portion of the evidence of Lewis Nibler, a witness, called by the plaintiff, in which he purports to testify to a conversation had between the said witness and one Mr. Link. Page 160-1.

31. That portion of the evidence of witness Samuel Greig, called by plaintiff, purporting to state a conversation between said witness and one Pierson, and one West. Page 206-8.

32. That portion of the evidence of witness Sarah Greig, called by plaintiff, purporting to state a conversation between said witness and her husband, Samuel Greig. Page 227-8.

33. That portion of the evidence of witness Clifton C. Blevin, called by the plaintiff, purporting to state a conversation between the said witness and one Rice. Page 236-7, Record.

34. That portion of the evidence of Mack Gillum, called by the plaintiff, purporting to state a conversation between the said witness and one William Pierson. Page 249, Record.

35. That portion of the evidence of witness John J. Keene, called by the plaintiff, purporting to state a conversation between the said witness and one Dean West, and one Dye. Page 360, Record.

36. That portion of the evidence of witness Benj. R. Allen, called by the plaintiff, purporting to be a conversation between said witness and one Thompson. Page 395-6.

37. That portion of the evidence of said witness

Allen, with reference to further conversation with one Humphrey. Page 401.

38. That portion of the evidence of witness Henry T. James, called by the plaintiff, purporting to give the conversation between said witness and one J. G. McDonald. Page 421, Record.

39. That portion of the evidence of Joseph M. Hollister, with reference to alleged statements made by him before the United States Attorney and his assistants in April, 1907. Page 435-7, Record.

40. That portion of the evidence of Margaret Pierson, witness called by the plaintiff, purporting to state a conversation between said witness and her husband, William Pierson. Page 444-5, Record.

41. That portion of the evidence of Willis C. Lane, called by the plaintiff, purporting to state a conversation between himself and brother. Page 455, Record.

42. That portion of the evidence of William Pierson, witness called by the plaintiff, purporting to state conversation between himself and one Dean West. Page 467-8, Record.

43. All statements purporting to have been made by said witness, William Pierson, before Mr. Johnson, Asst. U. S. District Atty., in March, 1907. Page 478-9.

44. That portion of the evidence of Geo. T. Ellis, called by the plaintiff, purporting to state a conversation between witness and one Joseph Belk. Page 523-4, Record.

45. That portion of the evidence of Walter L. Harrison, witness, called by the plaintiff, purporting

to state a conversation between himself and one Dean West. Page 561-2, Record.

46. That portion of the evidence of Lewis L. Folsom, purporting to give the conversation between the witness and one Jack Nelson. P. 734.

47. That portion of the evidence of L. L. Sharp, a witness called by the complainant, and an employee of the complainant, in answer to the question, "Now, what did you find from your investigation of these lands?" at page 798, Record.

48. That portion of the evidence of L. L. Sharp in answer to the following question: "Did you, from your investigation, find that he had any connection with them in these cases?" Page 799, Record. And all of the evidence of the said witness on these pages, all of which was objected to by the defendant.

49. That portion of the evidence of the said witness, Sharp, beginning at the eighth line from the bottom of page 800, and on down to, and including page 803 of the Record.

50. All that portion of the evidence of the witness, Sharp, purporting to state a conversation between said witness and Senator Foster, contained on page 805 and 806 of the Record, to which objection was made by the defendant.

51. All that portion of the evidence of the said witness, Sharp, with reference to a conversation between the said witness and one A. B. Campbell, on page 807, Record.

52. All that portion of the evidence of said witness Sharp, with reference to hearing on appeal in certain contested cases, found on page 810, Record.

53. All of that portion of the evidence of said witness Sharp, with reference to a conversation had with one W. E. Borah, found on pages 811 and 812, Record.

54. All that portion of the evidence of the said witness, Sharp, with reference to a protest filed by certain parties in the Boise Basin. Pages 812 and 813, Record.

55. The defendant renews the motion to strike out the evidence of Sharp, for the reasons found on page 814, Record; and which motion was renewed on pages 893 and 894, Record.

56. That portion of the evidence of the witness, John T. Morrison, called for plaintiff, with reference to an alleged conversation with one W. E. Borah. Pages 867-8, Record.

57. All that portion of the evidence of the said witness, John T. Morrison, with reference to a conversation between the said witness and one Calvin Cobb. Pages 871-2.

58. All that portion of the evidence of witness Gustav A. Link, called by the plaintiff, with reference to a conversation between the said witness and one Dean West. Pages 895-6, Record.

59. All that portion of the evidence of witness, Mary Link, called by the plaintiff, with reference to a conversation between the said witness and her husband. Pages 911-2, Record.

60. All that portion of the evidence of witness Delilah Bayhouse, called by the plaintiff, in which her attention was called to certain questions asked her, and certain answers made by her at the time of



making final proof pursuant to the rules and regulations of the Department, to which evidence objections were made by the defendant. Page 972.

61. All of that portion of the evidence of witness Walter Joplin, called by the plaintiff, in answer to the following question: "Do you remember how much of it you accumulated in the year you made your final proof?" and all that portion of the evidence of the said witness in answer to the questions propounded at the land office at the time of making final proof pursuant to the rules and regulations of the Department. Pages 994-5, Record.

62. All that portion of the evidence of witness Ery A. Wilmot, a witness called by the plaintiff, purporting to state a conversation between the said witness and one Dean West. Pages 1009-10.

63. All the evidence of the witness, Ery A. Wilmot, with reference to the proceedings taken before the land office in the matter of his entry, for the reason that the records of the said land office are the best evidence, and were not produced, which motion was made by the defendant before the Examiner. Page 1037, Record.

64. All that portion of the evidence of the said witness, Ery A. Wilmot, found on pages 1018, 1910, 1020, and 1021, with reference to an alleged statement made by the said witness to United States Attorney Ruick, March, 1907.

65. All that portion of the evidence of the said witness, Ery A. Wilmot, with reference to a conversation between the said witness, and one Allen. Pages 1022-23.



66. That portion of the evidence of said witness, Ery A. Wilmot, with reference to certain statements alleged to have been made by him to the U. S. District Attorney in March, 1907, found on pages 1023, 1024, 1025, and 1026, Record.

67. All that portion of the evidence of John E. Hobbs, a witness called by the plaintiff, purporting to state the conversation between the said witness and one Harrington. Pages 1069 and 1070.

68. All that portion of the evidence of witness James F. Belk, called by the plaintiff, with reference to his answers to questions asked him when cross-examined under the rules and regulations of the land department at the time of making final proof. Pages 1121-3.

69. That portion of the evidence of witness Joseph Sullivan, with reference to his answers before the land office on cross-examination under the rules and regulations of the land department. 1136.

70. All that portion of the evidence of witness Sedwick Hoover, called by the plaintiff, purporting to state a conversation between said witness and one Dean West. Pages 1242-3, Record.

71. All of that portion of the evidence of said witness Sedwick Hoover, in answer to the following question: "I will ask you if this didn't all turn out just exactly as you had expected it to from the first time Dean West had spoken to you, with the exception of the fact that you didn't get as much as they promised you?" 1258.

72. All that portion of the evidence of Sedwick Hoover relative to the contents of an affidavit pur-

porting to have been made by the said witness and signed before one W. S. Wade, found pages 1260, 1261, 1262, and 1263, Record.

73. That certain affidavit purporting to have been made by the witness, Sedwick Hoover, and offered and received as Plaintiff's Exhibit #91A. Page 1265.

74. All that portion of the evidence of the witness Norman H. Young, called by the plaintiff, with reference to a typewritten statement purporting to be an interview between the said witness and District Attorney Ruick, April, 1907. Pages 1347, 1348, 1349, 1350.

75. All that portion of the evidence of Norman H. Young, with reference to said typewritten statement April, 1907, found pages 1363, 1364, Record.

76. That portion of the evidence of witness Samuel Vance, called by the plaintiff, in answer to the following question: "How near to it did you come?" Top page 1470, Record.

77. That portion of the evidence of Geo. W. Butler, relating to an alleged statement made by the witness to U. S. Attorney Ruick, in March, 1907, found pages 1547, 1548, and 1549, Record.

78. All that portion of the evidence of the witness A. F. Joplin called by the plaintiff, with reference to an alleged interview had between the said witness and Norman H. Ruick, United States Attorney, March 28, 1907, found on pages 1590 to 1597, Record.

79. That portion of the evidence of the said witness A. F. Joplin, with reference to a certain alleged

interview with U. S. Atty. Ruick, found pages 1601, 1602, 1603, and 1604, Record.

80. That portion of the evidence of witness A. F. Joplin, with reference to a certain alleged interview with U. S. Atty. Ruick, found pages 1608, 1609, 1610, 1612, 1613, and 1614, Record.

81. That portion of the evidence of the witness Mrs. Lelia Butler, formerly Mrs. Lelia Lee, relative to an alleged interview between the said witness and Mrs. Dora K. Burns. Page 1624.

82. All the evidence of Wm. J. Wills found on pages 1715 to 19, of Record; and particularly that part of the evidence of said Wills purporting to state a conversation between the said witness and one Henry Rice. Pages 1715 and 1716.

83. All that portion of the evidence of witness R. J. Harbaugh, a witness called by the plaintiff, purporting to give a conversation between the said witness and one Alexander Ellis. Page 1833.

84. That portion of the evidence of witness Harbaugh, with reference to an alleged interview had with the U. S. District Atty., found pages 1848 and 1849, Record.

85. That portion of the evidence of Wheeler H. Martin, a witness called by the plaintiff, with reference to supplementary cross-examination, and affidavit dated December 19, 1903, found on pages 1898-9, Record; and which defendant moved to strike out at page 1900, Record.

86. That portion of the evidence of Wheeler H. Martin, with reference to an alleged interview between the said witness and U. S. Atty. Ruick, Special

Agent Wade, and Mr. Garrett, Receiver of the land office, found page 1901, Record.

87. That portion of the evidence of witness Harry L. Clyne, called by the complainant, purporting to state a conversation between the said witness and one John Nelson, page 2103.

88. That portion of the evidence of the witness Arthur Anderson, called by the plaintiff, with reference to a timber and stone entry made by the said witness covering lands not involved in this action. Page 2106.

89. All of the evidence of Geo. P. Wheeler contained on pages 2163 to 2173, inclusive.

90. That portion of the evidence of said witness, Arthur Anderson, with reference to an affidavit, and the affidavit referred to in such evidence. Pages 2196-7.

91. The defendant moves to strike out all the evidence of Arthur Anderson, for the reason that it appears that the said witness never acquired title to any government land under the timber and stone act. Page 2227.

92. That portion of the evidence of witness Albert Nugent, called by the plaintiff, with reference to a conversation had with, and an affidavit given to one L. L. Sharp. Pages 2249-50, Record.

93. All that part of the evidence of G. D. Hosley, a witness called by the plaintiff, with reference to his evidence in the trial of United States vs. W. E. Borah, to which witness' attention was called, nominally for the purpose of refreshing his recollection. Pages 2330-34.

94. All that portion of the evidence of said witness G. D. Hosley, with reference to an alleged statement made by him to the U. S. District Atty. E. E. Garrett, and others before a meeting of the Grand Jury, found pages 2334-39.

95. All that portion of the evidence of said witness, Hosley, with reference to his testimony in the Borah trial, found pages 2362-64, Record.

96. All that portion of the evidence of witness, Matthias Zapp, consisting of an alleged affidavit made by Mr. Zapp. Pages 2376-7.

97. That portion of the evidence of M. A. Zapp, consisting of an affidavit made by him and found on page 2378, Record, for the reason therein stated.

98. That portion of the evidence of M. A. Zapp, called by the plaintiff, constituting Plaintiff's Exhibit #142A, consisting of list of lands on which taxes were paid by the Barber Lumber Company in 1903, by Chas. F. Koelsch. Page 2381.

99. The conversation between Ballentine and Wells, found on pages 91 and 92 of Record.

100. All those certain letters written by one William Sweet to Harry S. Worthman; identified at page 279; and offered and received in evidence as Plaintiff's Exhibits #23A-1 to 23A-16. Page 280.

101. All that portion of the evidence of witness Harry S. Worthman relative to the contents of a written escrow contract. Page 288.

102. That portion of the evidence of witness Harry S. Worthman, called by the plaintiff, with reference to a copy of contract offered and received in evidence as Plaintiff's Exhibit #23B-2, for the



reasons there stated. Pages 304 and 305.

103. That portion of the evidence of witness Irving W. Hart, relative to an alleged typewritten statement made to a representative of the District Attorney's office in March, 1907. Pages 1411-12.

104. That portion of the evidence of witness Samuel Vance, in answer to the following question: "Did you or Mr. Hobbs go with Mr. Downs to where Mr. Hobb's claim was, that day?" Bot. P. 1467; and the next succeeding question. Page 1470.

105. The evidence of witness, A. L. Richardson, with reference to the certificate of naturalization of Mrs. Margaret Scully, for the reason found at page 2147.

106. That portion of the evidence of witness, Nelson Bottcher, purporting to give a conversation with plaintiff's witness, Arthur Anderson. Pages 2433, and 2434.

107. That portion of the evidence of witness, Nelson Bottcher, purporting to state a conversation with witness Anderson, found page 2439.

108. That portion of the evidence of witness, C. R. Poncia, purporting to state a conversation between the said witness and plaintiff's witness, Arthur Anderson. Pages 2467, 2468, and 2469.

109. That portion of the evidence of witness, C. R. Poncia, with reference to a letter signed by the said witness, and in answer to the question "Did you get this information from Mr. Anderson?" Page 2471, and similar evidence, page 2472.

110. That portion of the evidence of the said Poncia in answer to the following question: "Mr.



Poncia, were the statements that you made in this letter true and correct, as you understood at that time?" Page 2472.

111. All ledger entries, checks, and stubs of Frank Steunenbergh personally and as agent, referred to in stipulation at page 2411.

112. The petition of witness Chapman, and the writ of habeas corpus in the matter entitled "In Re Chapman" heretofore pending in the District Court of Idaho, page 2484. Also, the order of Judge Gilbert, ordering the release of Mr. Chapman upon the hearing of said petition. Page 2485.

113. The subpoena issued in the case of the United States vs. Wm. E. Borah, to said witness, L. G. Chapman. Page 2486.

114. That portion of the evidence of witness E. E. Garrett, in answer to the question "At that hearing why did you hold those entries for cancellation?" Page 2516.

115. All that portion of the evidence of witness E. E. Garrett purporting to state a conversation between the said witness and one E. J. Dockery. Page 2549.

116. That portion of the evidence of said witness, Garrett, purporting to state a conversation between the said witness and one Parsons. Page 2550.

117. Notice of Appeal and Brief referred to in the evidence of E. E. Garrett, and received as Plaintiff's Exhibit 146B, and 146C, in the matter of appeal taken by Arthur Anderson. 2554-5

118. All that portion of the evidence of witness Garrett purporting to state a conversation between

the said witness, and plaintiff's witness, G. D. Hosley, with reference to Plat Book offered in evidence. Page 2556. Also, all similar evidence, pages 2557 and 2558.

119. All that portion of the evidence of witness E. E. Garrett purporting to state a conversation between the said witness and one Wm. E. Borah. Page 2558.

120. All that portion of the evidence of witness E. E. Garrett in answer to the question "Now were any of the final proofs that were held up by you, proofs of entrymen whose claims afterwards were deeded to the Barber Lumber Company?" Page 2591.

121. All evidence consisting of letters written by Wm. Sweet to J. H. Richards, found pages 2647 to 2655, inclusive.

122. That portion of the evidence consisting of a letter written from New York by Wm. Sweet, to Frank Steunenbergh, and dated March 25th, 1902. Page 2656.

123. That portion of the evidence of Plaintiff consisting of letters found on pages 2732, 2733, 2734, 2735, and 2736, being letters containing decisions in the cases of Allen, Ball, Wells, and Hunter.

124. Plaintiff's Exhibits 154A, and 154Y, page 2738, consisting of entry papers of Anderson, Wells, Ball, Hunter and Nugent.

125. That portion of the evidence of witness E. E. Garrett, relative to the attitude of Sharp after his visit to Spokane, in answer to the following questions: "Do you know whether or not his attitude

towards these claims was any different after he returned from that visit to what it was before he made the visit?" 2751.

126. All the evidence of witness Max Taylor, called for Plaintiff, with reference to certain newspaper items, and items referred to and set forth by witness, found pages 2764 to 2771.

127. All land office files involving timber and stone entries of John Christenson, Roy Dye, and other parties named in the objections made by defendants. Page 2786; and all of the papers marked respectively "Plaintiff's Exhibit 163 to Plaintiff's Exhibit 232, inclusive; and found on pages 2787 to 2791, inclusive; for the reasons stated at page 2787.

128. Plaintiff's Exhibit 233 to 298, inclusive, found pages 2792 to 2796, consisting of Non-alienation Affidavits filed in the land office by the entrymen named.

129. Plaintiff's Exhibit 299, found page 2799, consisting of a statement of the witnesses for whom subpoenas were issued on behalf of the complainant, and who were not found.

130. Plaintiff's Exhibit 301, being deed from John Kinkaid, to A. E. Palmer, found page 2806.

131. Plaintiff's Exhibits 304, 305, 307, and 308, being deeds to Defendants of lands not involved in this action. Pages 2808-9.

132. Evidence consisting of land office files and other evidence relating to the entry of Frank Martin, for the reasons stated. Page 2813.

133. Plaintiff's Exhibit 309M, being relinquishment of James T. Ball. Page 2880.

134. Plaintiff's Exhibit 310A, to 310M, inclusive, being land office files relative to timber and stone entries of Ella L. Martin. Page 2820.

135. All the evidence relating to homestead entries of Pat H. Downs, and Henry A. Snow. Pages 2835-2836.

136. Four letters written by the Commissioner of the General Land Office to the Register and Receiver at Boise. Pages 2837 to 2841, inclusive.

137. The evidence of E. E. Garrett with reference to a letter dated June 8, 1903, written by H. N. Coffin to Harry S. Worthman, together with said letter. Pages 2859 and 2860.

138. All the evidence of E. E. Garrett purporting to state a conversation between the said witness and one George M. Parsons. Page 2861.

139. Plaintiff's Exhibit #311, being the decision of the Register and Receiver in the contest case of United States vs. Arthur Anderson. Page 2862.

140. Plaintiff's Exhibits 312A and 312D, being land office files in the entry of James T. Ball. Page 2863.

141. Plaintiff's Exhibits 312E to 312K, being additional papers found in the files in the entry of James T. Ball.

142. Plaintiff's Exhibits 313A to 313K, being papers found in the files of the land office relating to timber and stone entries of Harvey H. Wells. Pages 2865 and 2866.

143. Plaintiff's Exhibits 316C to 316L, inclusive, being land office files in the matter of timber and stone entries of Ida M. Briggs. Page 2868.

144. Plaintiff's Exhibits 318A to 318H. Page 2869.

145. Plaintiff's Exhibits 319A to 319K. Page 2870.

146. Plaintiff's Exhibits 320A to 320B, being cross-examination of witness, Adella E. Brookheart, taken in the land office. Page 2887.

147. Plaintiff's Exhibits 322A to 322I. Page 2889.

148. Plaintiff's Exhibits 325A to 325B, and 325C, consisting of letters written by E. E. Garrett, Register of the local land office, to the Commissioner of the General Land Office at Washington, relative to timber and stone entries of Arthur Anderson, James T. Ball and Abel E. Hunter. Page 2892.

150. All the evidence of witness A. E. Brookheart, called by the plaintiff, relative to what other people told him they had received for their land. Page 2921.

151. All the evidence of witness Wm. H. Humphrey, relative to timber and stone entries made by him, for the reasons stated on page 3019.

152. All the evidence of witness Junius Wright relative to an alleged conversation had in 1905, between the said witness and John I. Wells. Pages 3083 and 3087.

153. All that portion of the evidence of witness Junius Wright relative to an alleged conversation between the said witness and Governor Steunenberg, beginning at the bottom of page 3087 and continuing to page 3091.

154. That portion of the evidence of witness



Junius Wright relative to an alleged conversation with John I. Wells. 3092.

155. That portion of the evidence of witness M. S. Stephenson, called by the plaintiff, in answer to the following question: "Were they folded to keep you from seeing what was on the papers?" Page 3189.

156. That portion of the evidence of said witness, Stephenson, in answer to the following question: "And you got just exactly what the understanding was when Wells first called upon you, did you not?" 3192.

157. That portion of the evidence of Dora K. Burns, called by the plaintiff, purporting to state a conversation between the said witness and one Dean West, found page 3270.

158. That portion of the evidence of witness Dora K. Burns, in answer to the following question: "Now, what were you to do with this land that you located on, to make your \$240.00?" Page 3272.

159. All the evidence of witness Dora K. Burns, for the reason that the entry made by the said witness is not involved in this action; and, for the further reason that the Complainant refused and neglected to procure the filing and entry papers of the said witness, on demand of the defendant. Page 3310.

160. That portion of the evidence of witness Aaron Ownbey, called by the plaintiff, purporting to state a conversation between the said witness and one Wm. Gibbard. Page 3319.

161. The answer of witness Margaret Pierson to



the following question: "How long had you been in this country when you took up a timber and stone claim?" Page 444.

162. All the evidence of the witness Henry A. Snow purporting to state conversations between said witness and one Patrick Downs, to which defendant objected as incompetent, irrelevant, and immaterial, and hearsay. 3414, 3415, 3416, 3418, 3419, 3421, each of which objections is hereby renewed.

Dated June 30th, 1909.

C. T. BUNDY,  
A. A. FRASER,  
Solicitors for the Defendants.

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**Classification of Entries Mentioned in Bill of Complaint.**

Class A.

Basin	Page 1	30	
Crooked River	2	62	
6-4	3	18	110.
		—	

Class B, 4 19

Class C,			
Basin	6	3	
Crooked River	6	4	
6-4	6	2	9
		—	

Class D	6	2
Class E	7	64
Class F	9	6

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Total Entries Involved. . . . . 210

## CLASS "A."

It appears from the undisputed evidence that the following named entrymen and entrywomen named in the bill of complaint, filed upon lands under the Timber and Stone Act under the date set opposite their respective names; that final proof was offered on the date shown, and approved, and final receipt issued at the date indicated, and that they respectively deeded on the date shown by the appropriate column. In every case the entryman paid his own location, preliminary, and filing expense, and paid the Government for the land without borrowing any portion of the funds necessary, or otherwise procuring the same, from any of the defendants or alleged conspirators. Each testifies emphatically that at no time was he or she a party to any agreement express, and implied, whereby any person, firm, or corporation had any interest in, or lien upon the land embraced in his or her entry, or upon the timber situate thereon, and that the allegations of the complaint, so far as his or her respective entry is concerned, are false.

BASIN ENTRIES.

Name.	Page.	Date of Fil'g.	Date of F. Prf.	Date of F. Recept.	Date of Deed.	Remarks.
Baker, J. O.....	329	12/24/01	3/20/02	7/22/02	7/ 7/04	
Butler, Edw. E....	1296	3/28/02		6/24/02	6/19/03	
Downs, P. H.....	3509	8/17/01	11/13/01	7/26/02	8/27/04	Papers only in Evi- dence.
Ewing, Clara B...	1657	8/11/02		11/ 7/02	6/29/03	
Ewing, A. B....	2978	8/11/02		11/ 7/02	6/29/03	
Eagleson, M. Leta.	2147	1/ 2/04		3/17/04	5/23/04	
Folsom, Lewis L..	732	10/30/01	1/22/02	7/25/02	6/23/03	
Gillum, Mack....	248	12/26/01	3/18/02	7/29/02	7/31/02	
Gary, John R....	1367	12/19/01	3/ 7/02	7/18/02	3/20/02	
Humphrey, Henry.	3068	4/29/02		7/17/02	11/12/03	
Harrison, W. L...	560	11/26/01	2/12/02	9/ 5/02	9/12/02	
Hollister, J. M...	431	10/26/01	1/20/02	7/25/02	6/23/03	
Hollister, Leonora.	451	10/26/01	1/21/02	7/25/02	6/23/03	
Lane, Willis C...	454	3/25/02		6/18/02	4/20/03	
Lane, Frank.....	3249	4/ 4/02		7/ 7/02	3/14/03	
McDonald, J. D...	719	5/ 4/02		8/ 7/02	8/ 9/02	
Monroe, John C..	1399	12/31/01	3/31/02	7/29/02	6/ 2/03	Papers only
Monroe, Mary A.	1388	1/ 7/02	4/ 7/02	8/ 1/02	6/ 2/03	
Pritchard, L. M..	3685	3/21/02		6/13/02	3/19/03	
Patterson, Chas..	764	3/28/02		6/24/02	3/27/03	
Snow, W. F.....	3439	9/10/01	11/30/01	10/14/02	10/20/02	
Thurman, Fred'ek	513	3/26/02		6/19/02	5/ 7/02	Papers only.
Thompson, Jennie E. ....	1317	8/12/02		11/11/02	3/23/03	
Walker, W. S....	1645	4/ 5/02		6/20/02	3/16/03	
Worthman, H. S..	268	4/ 5/02		6/19/02	3/16/03	
Young, Norman H.	1328	1/22/02	4/14/02	7/16/02	11/10/04	
Martin, Bertha..	1452	1/25/05		4/13/05	5/ 1/05	
O'Farrell, Evelyn.	1674	11/27/01	2/26/02	8/ 1/02	8/ 1/05	
Phelps, E. J..	756	3/ 6/05		5/13/05	7/28/05	
Thornton, Dennis.	1128	1/27/06		4/ 5/06	5/ 7/06	

Name.	Page.	Date of Fil'g.	Date of F. Prf.	Date of F. Recept.	Date of Deed.	Remarks.
CROOKED RIVER ENTRIES.						
Austin, W. C.....	3143	7/10/03		10/13/03	11/ 6/03	Did not testify
Austin, Ada.....	3155	7/10/03		10/13/03	11/ 6/03	
Alexander, Caro-						
line .....	680	10/ 7/02		2/12/03	2/16/03	
Anderson, Eloff..	343	8/29/02		12/ 8/02	2/11/03	
Anderson, Emma.	354	8/29/02		12/ 8/02	2/11/03	
Bayhouse, Frank..	703	9/24/02		2/ 5/03	2/17/03	
Beckley, C. R....	2997	10/ 3/02		2/12/03	2/13/03	
Beckley, Mantie...	2988	10/ 3/02		2/12/03	2/13/03	
Bayhouse, Geo...	685	9/24/02		3/13/03	3/24/03	
Belk, J. E.....	1115	9/26/02		3/17/03	3/24/03	
Butler, Louisa E.	1486	9/15/02		1/ 8/03	2/12/03	
Bliven, C. C.....	236	9/16/02		4/29/03	4/30/03	
Butler, Elvie M..	1477	9/15/02		1/ 8/03	2/12/03	
Bilderback, Emma						
G. ....	634	7/24/02		1/28/03	2/12/03	
Bayhouse, Alfred.	814	9/15/02		1/19/03	2/12/03	
Bayhouse, Henry.	919	9/15/02		1/ 9/03	2/12/03	
Butler, G. W....	1527	9/23/02		5/ 4/03	5/16/03	
Bayhouse, Delilah.	965	9/24/02		1/28/03	2/12/03	
Cooper, Jeanette B.	1045	10/17/02		2/18/03	2/29/03	
Ellis, Geo. T....	522	9/19/02		1/22/03	2/13/03	
Eagleson, D. C..	1434	9/19/02		1/21/03	2/16/03	
Eagleson, Harry K.	775	9/19/02		1/29/03	2/16/03	
Eagleson, Helen E.	826	10/ 7/02		2/12/03	2/16/03	
Eagleson, C. H..	1420	9/19/02		1/29/03	2/16/03	
Fordney, Alice...	1497	9/15/02		1/ 8/03	2/12/03	
Now Alice Gregory.						
Gardner, Elma E.	1692	10/ 3/02		3/19/03	3/28/03	
Gibbard, W. H..	309	8/29/02		12/ 3/02	2/12/03	
Gibbard, Addie G.	321	9/ 8/02		12/23/02	2/12/03	
Hanson, Andrew.	1213	9/16/02		1/15/03	2/12/03	
Hart, Fannie R..	1417	9/ 9/02		12/22/02	3/12/03	
Hart, I. W.....	1401	9/ 9/02		12/22/02	3/12/03	

Name.	Page.	Date of Fil'g.	Date of F. Prf.	Date of F. Recept.	Date of Deed.	Remarks.
Joplin, Walter...	987	9/23/02		5/ 4/03	5/14/03	
Joplin, Sonora...	976	10/ 2/02		3/19/03	3/25/03	
Joplin, Andrew F.	1559	10/ 2/02	3/19/03	3/19/03	3/25/03	
Kampner, A. R...	1059	10/17/02	2/18/03	2/18/03	2/20/03	
Kingsley, C. S...	492	9/11/02		12/22/02	3/12/03	
Kingsley, Caro F. B. ....	505	9/11/02		12/22/02	3/12/03	
Martin, Henrietta	1155	9/29/02		3/18/03	3/24/03	
Martin, W. H...	1142	9/29/02		3/18/03	3/24/03	
Neil, John M...	201	9/15/02		12/17/02	2/11/03	
Neil, Maud P...	202	9/15/02		12/17/02	2/11/03	Papers only
Nusbaum J. V...	654	9/19/02		1/21/03	2/16/03	Papers only
Nusbaum, Pearl I.	645	10/ 7/02		2/14/03	2/16/03	
Ownbey, Mary E..	955	8/30/02		12/11/02	2/ 9/03	
Ownbey, Aaron...	3318	9/ 6/02		12/18/02	1/27/03	
Ownbey, Jackson..	938	8/30/02		12/11/02	2/ 9/03	
Barker, B. T....	1726	9/ 4/02		12/17/02	2/11/03	
Sensenig, E. S...	539	9/19/02		1/21/03	2/16/03	
Sensenig, Lucretia.	552	9/30/02		2/13/03	2/16/03	
Schmelzel, Eliza'h.	604	10/ 3/02		2/16/03	2/25/03	
Stahl, Arietta...	619	9/29/02		3/17/03	3/25/03	
Stahl, B. E....	626	9/29/02		3/17/03	3/25/03	
Sullivan, Helen...	1194	2/12/03		5/ 7/03	5/14/03	Papers only
Sullivan Joseph...	1177	2/12/03		5/ 7/03	5/14/03	
Starn, E. H....	588	9/ 6/02		12/18/02	2/18/03	
Starn, Mary.....	615	9/ 6/02		12/18/02	2/18/03	
Twogood, M. L...	1740	9/13/02		1/14/03	2/12/03	
Twogood, Ida...	1779	9/15/02		1/16/03	2/12/03	
Vance, S. E....	1466	8/10/03		11/10/03	12/16/03	
Weasel, F. P....	999	4/22/03		7/13/03	7/31/03	
Youngkin, J. A...	662	8/29/02		12/ 3/02	2/12/03	
Youngkin, Susie.	748	9/ 8/02		3/24/03	3/28/03	

NOTE.—Each of the entrymen and entrywomen in Class A testified personally to the facts above stated, except the following: Maud P. Neal, Frederick Thurman, J. V. Nusbaum, Helen Sullivan, John C. Monroe, and Ada V. Austin. The land office file of the entries of each of these persons was offered and received in evidence in connection with the evidence of their respective husbands or wives who testified at the page indicated, to the other facts stated, showing each of them to belong to this class.

Name.	Page.	Date of Fil'g.	Date of F. Prf.	Date of F. Recept.	Date of Deed.	Remarks.
6-4 Entries.						
Davidson, W. B.	1786	9/14/03		12/ 3/03	12/30/03	
Ehrmanntraut, Jos. ....	3389	9/14/03		12/15/03	12/24/03	
Ehrmanntraut, Mar't .....	3380	9/14/03		12/15/03	12/24/03	
Eagleson, Geo. C.	1962	9/14/03		12/11/03	12/16/03	
Eagleson, Mary J.	1976	9/14/03		12/11/03	12/16/03	
Faraday, C. D.	1864	9/14/03		12/17/03	2/13/04	
Kinerd, L. F.	1798	9/14/03		12/23/03	3/ 3/04	
Martin, T. L.	2089	9/14/03		12/11/03	1/ 2/04	
Martin, Frank R.	2076	9/14/03		12/15/03	12/23/03	
Martin, Wheeler H.	1879	9/14/03		12/11/03	8/19/04	
Noble, H. B.	2954	9/14/03		12/24/03	2/ 4/04	
Penrod, Jos.	2039	9/14/03		12/17/03	3/28/04	
Ross, W. A.	1909	9/14/03		12/23/03	12/28/03	
Ross, Josie M.	1949	9/14/03		12/23/03	12/28/03	
Reeves, Wilburt R.	2051	9/14/03		12/17/03	2/29/04	
Snow, Cleora M.	2064	9/14/03		12/24/03	1/15/04	
Now Mrs. Wickersham						
Scully, Margaret.	2129	9/14/03		12/10/03	2/ 1/04	
Woodburn, Jno. K.	1755	9/14/03		12/ 2/03	10/24/04	

## CLASS "B."

The following entries made by the following persons were all in the tract known as "The Boise Basin." Each of the entrymen and entrywomen testified to having paid his or her own funds for all preliminary expenses including location fees paid to Wells & Downs, filing fees in land office, and cost of publication. Each one made final proof prior to April 10th, 1902, and each one borrowed some, or all of the funds used for that purpose, from John I. Wells. Each one testified that, at the time of making his or her original filing he had not entered into any agreement of any kind—express or implied, by



which any person, firm or corporation, had acquired any interest in, or lien upon the land embraced in his entry; and each one testified that at the time of receiving the money from Mr. Wells, he entered into no agreement for the sale of his land and had no conversation with anyone with reference to selling the same until final proof was allowed and final receipt issued. In each case final proof was taken and held up in the local land office for a considerable period of time, the local office reporting favorably on each entry at the time final proof was offered, and took from each a non-alienation affidavit before issuing final receipt and certificate. Each testified that his or her sworn statement filed at the time of applying to purchase, was true; and each testified that the allegations of the complaint are false so far as his or her entry is concerned.

Name.	Page.	Date of Fil'g.	Date of F. Prf.	Date of F. Recept.	Date of Deed.	Remarks.
Abrams, William.	2	10/30/01	1/22/02	7/15/02	7/16/02	
Ballentine, C. W....	85	10/29/01	1/22/02	7/16/03	8/31/03	
Burns, L. K.....	24	11/26/01	2/14/02	6/24/02	9/18/02	
Brockhart, A. E.	2906	1/14/02	4/ 8/02	8/26/02	9/15/03	
Clyne, H. L.....	2102	10/31/01	1/24/02	8/19/02	7/18/03	
Gillum, Alfred ..	248	12/26/01	3/27/02	7/18/02	7/31/02	See Mack G.
Granger, Homer C.	1158	9/20/01	12/12/01	7/15/02	7/28/03	
Greig, Samuel....	206	12/ 7/01	2/21/02	7/ 1/02	5/24/03	
Greig, Sarah.....	227	12/ 7/01	2/21/02	7/ 1/02	5/24/03	
Link, G. A.....	895	11/ 1/01	1/29/02	7/22/02	6/19/03	
Link, Mary.....	911	11/ 1/01	1/29/02	8/19/02	6/19/03	
Lee, Lelia.....	1623	12/19/01	3/ 6/02	7/18/02	3/26/03	Now Mrs. Butler.
Nibler, Lewis....	159	11/ 1/01	1/28/02	8/ 6/02	8/ 7/02	
Pierson, Margaret.	407	12/ 7/01	2/21/02	6/19/02	3/23/03	
Pierson, Wm....	466	11/26/01	2/13/02	6/23/02	3/23/03	
Stephenson, Lettie L. ....	3159	12/24/01	3/13/02	7/18/02	9/15/03	
Stephenson, M. L.	3182	12/24/01	3/14/02	7/18/02	9/15/03	
West, Dean.....	60	10/26/01	1/16/02	7/ 9/02	3/16/03	
West, Louisa....	78	11/ 1/01	1/29/02	7/18/02	3/16/03	

## CLASS "C."

The following named entrymen and entrywomen borrowed some, or all of the money used by them in making final proof; which final proofs were made subsequent to April 10th, 1902. Some of the money was borrowed from John I. Wells, and some from John Kinkaid, and in one case a witness said from L. M. Pritchard. This list constitutes all of the entries in which final proof was made subsequent to April 10th, 1902, by means of money borrowed from any of the defendants or alleged conspirators. Each entryman testified to the effect that his sworn statement filed at the time of making application, was true; and that neither at that time nor at the time of making final proof had he entered into any agreement, express or implied, with any person, by which any person, firm or corporation acquired any interest in, or lien upon the land he was applying to purchase, or the timber thereon. Each testified that the allegations of the complaint are false so far as his entry is concerned.

## BASIN ENTRIES.

Name.	Page.	Date of Fil'g.	Date of F. Prf.	Date of F. Recept.	Date of Deed.	Remarks.
Brisbin, Edw... .	138	4/18/02		7/ 9/02	7/12/02	
Hoover, Sedwick.	1241	3/25/02		6/18/02	7/14/02	
Wilnot, Ery... .	1008	3/22/02		6/12/02	6/24/03	

## CROOKED RIVER.

Hobbs, John E...	1068	8/10/03		11/10/03	12/17/03	
Thompson, Mary.	1196	9/16/02		1/23/03	2/11/03	
McDonald, Frank R. ....	1702	9/16/02		4/28/03	5/ 4/03	
Lockhart, E. A...	1512	7/24/03		10/16/03	11/ 5/03	

## 6-4 ENTRIES.

Ellis, A. T.....	2019	9/14/03		12/11/03	1/ 4/04	
Harbaugh, R. J...	1815	9/14/03		2/ 7/03	1/ 6/04	

### CLASS "D."

The following entries were made under arrangement between the entrymen and one Wm. H. Humphrey, by which Humphrey agreed to furnish the necessary funds with which to procure title, after which the land was to be sold and the profits divided between the entrymen and Humphrey. The entryman, Thompson, did not testify, but his entry was embraced in the stipulation pursuant to which the entry papers of a large number of entrymen not called, were introduced in evidence. Mr. Wm. H. Humphrey testified as to both of these entries to the effect that the agreement was entirely between himself and the entrymen, and that none of the defendants were parties to it. Evidence establishes that the entries were made with the exception of selling it, but no efforts were made to sell until after final receipt was issued.

Allen, Ben R.....	394	8/10/03	11/ 6/03	2/ 9/04	
Thompson, D. G..	3028	1/ 5/02	2/25/03	3/ 6/03	C. R.

### CLASS "E."

No evidence was introduced with reference to the lands acquired by the following named entrymen and entrywomen, except that by virtue of a stipulation made during the trial, March 11, 1909, the entry papers of each such entrymen and entrywomen were offered and received in evidence, from which it appears that they filed application to purchase, tendered their final proof, received final receipt and certificate, and deeded at the times hereinafter set forth. In connection with the entry papers, patents issued to

each such entrymen and entrywomen, were offered in evidence.

The following statement also shows the particular tract to which each entry belonged: The stipulation and entry papers, including patents, constitutes all that is before the Court with reference to these entries.

Name.	Tract.	Date of Fil'g.	Date of F. Prf.	Date of F. Rept.	Date of Deed.	Remarks.
Allen, Homer G.....	Basin	3/22/02		6/12/02	6/13/02	
Avery, Geo. R.....	6-4	9/14/03		12/16/03	12/24/03	
Benedix, H. F.....	Basin	11/26/01	2/13/02	7/26/02	8/12/02	
Barker, Smith.....	Basin	3/28/02		6/24/02	6/26/02	
Brookheart, Adella....	Basin	3/26/02		6/17/02	8/ 1/03	
Byro, J. H.....	Basin	4/18/02		7/11/02	7/12/02	
Bowen, S. C.....	Basin	3/17/02		6/23/02	10/30/02	
Bush, E. E.....	C. R.	9/24/02		5/ 4/03	5/15/03	
Blandford, S. M.....	C. R.	10/ 3/02		2/10/03	2/12/03	
Blandford, E. L.....	C. R.	10/ 3/02		2/10/03	2/12/03	
Briggs, Abbie M.....	6-4	6/ 8/04		9/20/04	9/29/04	
Bates, John.....	Basin	10/21/01	1/13/02	8/ 2/02	3/17/06	
Cassel, John M.....	Basin	12/19/01	3/ 7/02	11/ 5/02	3/19/03	
Cutler, G. M.....	Basin	10/ 9/05	12/ 9/01	7/26/02	8/13/03	
Campbell, A.....	6-4	9/14/03		12/16/03	12/28/03	
Clawson, C. W.....	6-4	9/14/03		12/15/03	12/14/03	
Cavanaugh, W. E.....	C. R.	9/14/02		12/26/02	2/11/03	
Dockery, Eva H.....	C. R.	9/15/02		12/20/02	2/11/03	
Dockery, E. J.....	C. R.	9/15/02		12/22/02	2/11/03	
Ensworth, Geo. H....	Basin	2/21/02		6/13/02	6/18/02	
Eoff, Victoria.....	Basin	7/14/04		10/25/04	9/ 2/05	
Flint, Uriah.....	Basin	12/21/01	3/12/02	7/12/02	8/ 5/02	
French, Joseph.....	Basin	3/26/02		6/20/02	7/ 9/03	
French, John D.....	Basin	3/26/02		6/20/02	6/25/03	
Fisher, Anna.....	6-4	9/14/03		12/11/03	2/29/04	
Glass, T. M.....	Basin	10/ 1/01	12/13/01	8/ 2/02	9/ 3/02	

Name.	Tract.	Date of Fil'g.	Date of F. Prf.	Date of F. Rcpt.	Date of Deed.	Remarks.
Hamilton, J. H.....	Basin	9/11/01	11/27/01	7/29/02	2/12/03	
Horner, S. S.....	C. R.	7/10/03		10/ 9/03	12/29/03	
Horner, Hortense.....	C. R.	7/10/03	10/ 9/03	10/ 9/03	12/29/03	
Harrington, E. A.....	C. R.	5/29/03	8/19/03	8/19/03	9/10/03	
Johnson, Oliver.....	Basin	9/25/02		1/29/03	6/17/03	
Judge, Wm.....	Basin	3/25/02	6/18/02	6/18/02	6/28/02	
Jaycox, Luella.....	C. R.	7/20/03		10/16/03	12/31/03	
Jaycox, Orlin R.....	C. R.	7/20/03		10/16/03	12/31/03	
Kelly, T. F.....	C. R.	9/ 4/02		12/17/02	2/11/03	
Koppa, Michael.....	Basin	10/ 9/01	12/19/01	8/ 2/02	7/29/05	
Lewin, W. H.....	Basin	3/28/02		7/25/02	7/15/03	
Lewin Gertrude.....	Basin	4/29/02		7/18/02	7/15/03	
Lake Beulah.....	6-4	1/ 8/04		9/20/04	9/30/04	
McBurney, A. F.....	Basin	12/23/01	3/13/02	8/ 1/02	4/ 7/03	
Marcum, Sam.....	Basin	3/22/02		6/12/02	6/28/02	
Marcum, W. J.....	Basin	4/18/02		7/ 9/02	7/ 9/02	
Nickerson, F. B.....	Basin	10/19/01	1/ 7/02	5/ 5/02	6/ 3/03	
Nelson, Chas.....	Basin	11/ 1/01	1/28/02	8/ 6/02	3/19/03	
Noble, W. F.....	C. R.	9/25/02		1/29/03	2/13/03	
Olson, Jens.....	Basin	8/27/02		11/21/02	12/ 6/02	
Ownbey, Harrison.....	C. R.	8/30/02		12/11/02	2/ 9/03	
Ownbey, James.....	C. R.	8/30/02		12/11/02	2/13/03	
Pawley, J. J.....	C. R.	8/10/03		11/10/03	11/21/03	
Rose, Jno. W.....	Basin	9/16/02		1/23/03	2/ 6/03	
Rice, Henry.....	Basin	12/26/01	3/28/02	8/ 1/02	3/19/03	
Roberts, W. F.....	Basin	12/24/01	3/20/02	7/18/02	3/17/03	
Rothine, G. H.....	Basin	11/26/01	2/14/02	7/14/02	7/14/02	
Resser, Burt.....	C. R.	7/24/03		10/16/03	11/14/03	
Walker, C. A.....	Basin	12/ 7/01	2/20/02	7/18/02	8/12/02	
Woodman, D. P.....	Basin	3/44/02		6/17/02	3/23/03	
Warren, G. S.....	Basin	8/11/02		11/11/02	3/23/03	
Wilmot, W. F.....	Basin	12/26/01	3/19/02	7/18/02	3/20/03	
Wilson, Lena D.....	C. R.	10/ 2/02		3/20/03	3/26/03	
Wilson, W. L.....	C. R.	10/ 2/02		3/20/03	3/26/03	
Wilhite, G. F.....	C. R.	9/24/02		1/27/03	2/14/03	
Wilhite, Elizabeth.....	C. R.	9/24/02		1/27/03	2/14/03	
York, G. M.....	C. R.	4/22/03		7/20/03	7/31/03	
Kempner, H. M.....	C. R.	10/ 1/02		1/14/03	2/ 2/02	

NOTE.—The stipulation above referred to, made March 11, 1909, during the trial of this action, included eighty-seven (87) entries. Subsequent to making the stipulation, a large number of the entrymen therein mentioned were found and testified, and they are not included in this classification. The stipulation also includes a large number of entries not mentioned in the bill of complaint and not involved in this action, and they are also excluded. The above and foregoing list includes simply the names of entrymen and entrywomen who are named in the complaint and in the stipulation referred to, and who did not testify in this case. All names included in the stipulation, who did testify, and all whose entries are not involved in this action, are excluded from the above list.



## CLASS "F."

No evidence was introduced, or stipulation made with reference to the following entries which constitute all of the entries named in the bill of complaint not embraced in the foregoing classification. As to these entries, there is nothing before the Court but the allegations of the bill.

NAME.	TRACT.
Blake, J. J. ....	Basin.
Gardner, C. M. ....	Basin.
Gardner, Alfarata.....	Basin.
Holcomb, A. S. ....	Basin.
Thompson, Nellie J. ....	Basin.
Gardner, Nathan M.....	Basin.

Endorsed: Filed July 1, 1909. A. L. Richardson,  
Clerk.

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At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Thursday the 8th day of July, 1909.  
Present: Hon. FRANK S. DIETRICH, Judge.

No. 47.

THE UNITED STATES

vs.

BARBER LUMBER COMPANY et al.

**Order Setting Cause for Trial.**

It is hereby ordered that this cause be set for trial on Monday the 26th inst. at 10 o'clock, A. M., and thereupon by agreement of counsel for the respective parties and consent of the Court, it is ordered that



the parties herein be relieved from the requirements of Rule 53 of this Court, and that each party serve upon the other a copy of their brief in said cause before the argument begins. That the defendant have five days after the completion of said argument to file and serve an amended brief and the plaintiff is given five days thereafter to file and serve its reply brief.

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At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Friday, the 30th day of July, 1909.  
Present: Hon. ROBERT S. BEAN, Judge.

No. 47.

THE UNITED STATES OF AMERICA,  
Complainant,  
vs.  
BARBER LUMBER COMPANY et al.,  
Defendants.

**Order Submitting Cause.**

The argument of this cause adjourned on yesterday for further hearing was this day concluded by Chas. A. Keigwin, Assistant to the Attorney General, on behalf of the complainant, and said cause was submitted and taken under advisement by the Court.

*In the Circuit Court of the United States for the District of Idaho.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

**Opinion.**

PEYTON GORDON and CHARLES A. KEIGWIN, Special Assistants to the Attorney General, Solicitors for the Complainant.

C. T. BUNDY and A. A. FRASER, Solicitors for Defendant.

BEAN, District Judge.

This is a suit brought by the Government against the Barber Lumber Company, a corporation, and others, to cancel and set aside 210 patents for lands in the State of Idaho, issued by the complainant to that number of entrymen and entrywomen under the Timber and Stone Act of June 1878, 20 Stat. at Large, Chap. 151, the title to the lands described in such patents having, by proper conveyances, vested in the defendant corporation.

The complainant charges, in substance that the defendant, the Barber Lumber Company, and its co-defendants, intending to defraud the complainant out of large tracts of valuable public lands, did combine, conspire and agree to and with Frank Steunenberg

now deceased, and one John I. Wells, and with other parties not necessary to be named to fraudulently procure for themselves and for their use and benefit and pecuniary advantage, large quantities of public lands by procuring certain named persons to avail themselves of the provisions of the Timber and Stone Act, by filing written statements and doing the other things required by said act, and the regulations of the Commissioner of the General Land Office, under an agreement then and there and theretofore had and entered into, wherein and whereby the said company and its co-defendants agreed to purchase the lands described in the respective statements and applications of the applicants, as soon as they should secure title thereto, they agreeing to furnish or procure to be furnished and supplied to the applicants the amount of money necessary to pay all expenses in connection with making the filings and procuring title, including the sum necessary to pay for the land.

That in pursuance of this unlawful and corrupt conspiracy and agreement, and to carry out and effect the object and purposes thereof, the defendant, the Barber Lumber Company and its codefendants, together with Steunanberg and Wells, did unlawfully, falsely, fraudulently and corruptly induce and procure divers named persons to apply at the United States Land Office at Boise, Idaho, for lands under the provisions of the Act of Congress referred to, and did cause, induce and procure such parties, and each of them, to appear before the Register or Receiver of the Land Office, and each to make and subscribe an oath to the written statement required by

the Act of Congress, of persons desiring to avail themselves of the provisions thereof, in substance that he did not apply to purchase the land described in his statement on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract with any person or persons whomsoever, by which the title which he might acquire might inure in whole or in part to the benefit of any person except himself; that the statement so made by each of the applicants was false, fraudulent and untrue, and made for the purpose of procuring title from the United States to the lands described in the several sworn statements to the persons named, pursuant to the unlawful, false, fraudulent and corrupt conspiracy, combination and agreement referred to; that in truth and in fact divers of the several applicants had been supplied and furnished the money with which to pay for the lands, and the fees and expenses incident to obtaining title thereto, by the Barber Lumber Company and its codefendants, pursuant to such unlawful combination and conspiracy; that thereafter the Barber Lumber Company and its codefendants, by reason of such unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons named in the bill as employed by them for that purpose, fraudulently obtained and procured the patents of the complainant to be issued to the various named persons, and that such patents were not procured in compliance with the laws of the United States, but were illegal, fraudulent and void as against the com-

plainant, and contrary to equity and good conscience.

The Barber Lumber Company alone answered, denying the fraud charged in the bill, and pleading affirmatively that it purchased the lands in controversy from the several entrymen and entrywomen in good faith for a valuable consideration and without notice or knowledge of illegality in the method of procuring title from the Government, if any such existed.

Upon the issues thus joined, the case was referred to a Master to take testimony and upon his report, the case has been tried and submitted.

The suit is brought to set aside land patents issued by the Government on the ground of fraud. The Bill of Complaint sets forth in detail the acts constituting the alleged fraud, which consist substantially in an averment that while the lands in question were entered ostensibly in the names of the several entrymen and entrywomen, they were in reality entered for the use and benefit of the Barber Lumber Company, and under a corrupt and illegal agreement between such entrymen and entrywomen and the company made prior to the time the respective applications for the purchase of the land were filed in the local land office, and that the affidavits attached to each of said applications, and the oath of each applicant made at the time of his application that he did not apply to purchase the land on speculation but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever,



by which the title which he might acquire should inure in whole or in part to the benefit of any person except himself, was false and untrue. Upon this averment complainant must recover if at all. In a suit of this character, the bill must show specifically and in detail in what the fraud consists and how it was effected, and although the complainant may make out a case which, under other circumstances would entitle it to the aid of the Court, yet if it is not the case made by the bill, it cannot recover.

Southall vs. Farish, 1st L. R. A. 641.

Kent vs. Kent, 82 Va. 205.

Lewis Pub. Co. vs. Wyman, 168 Fed. 756.

With this understanding of the issues and the rule of law governing the proof thereunder we can proceed to a consideration of the facts.

The evidence is voluminous, consisting of between four and five thousand pages of closely typewritten matter, together with a large number of exhibits, and in the nature of things it is impossible to note it in detail, or the various inferences or conclusions drawn therefrom. I can do nothing more than state briefly my conclusions, after a careful consideration of the record, aided materially, as I have been, by the able and exhaustive arguments and briefs of counsel. A large part of the testimony was taken over the objection of the defendant that it was immaterial, irrelevant and incompetent, and these objections were renewed on the trial by a motion to strike out. It is not necessary, however, to consider the objections at this time, for the reason that whether the testimony is competent or not, it does not affect the conclusions



to which I have arrived.

The lands involved, because of their locality and the time and circumstances under which the title was acquired from the Government are naturally divided into three classes and have been so considered throughout the trial, although not so designated in the bill, viz.: Ninety-two entries in the Boise Basin, and known as the "Basin Lands." A like number of entries in the Crooked River Country, some distance east of the Basin and known as the "Crooked River Lands." And twenty-six entries in township six, four east, known as the "6-4 lands."

The Basin lands were all open to entry prior to the year 1898, but no entries were made therein until the year 1901. During the late summer or early autumn of that year, Parrish & Manning, a Minnesota firm, advertised in the Minneapolis papers that they were able to and would show persons desiring to purchase lands under the Timber & Stone Act, valuable tracts of lands in the Boise Basin, in the State of Idaho, for a consideration of \$135.00 paid by each, which was to include the cost of transportation from Minnesota to the lands. In pursuance of this advertisement and under an arrangement with Parrish & Manning, five or six people came from Minnesota to Idaho, with the intention of taking land under the Timber & Stone Act. Among the number were Patrick H. Downs, and a man by the name of Snow. Downs and Snow were somewhat familiar with timber, acquainted with the Government surveys, and capable of estimating the timber on a given tract of land and tracing out the boundary lines

thereof. After they arrived in Idaho they worked five or six weeks for Parrish & Manning in cruising the lands in the Boise Basin, and thus familiarized themselves with the quantity and quality of the timber thereon, and with the location of the several tracts. Parrish & Manning's scheme, however, proved unsuccessful and was abandoned early in the fall of 1901, but, either on account of the notoriety which it had given to the Boise Basin, or because of a local railroad enterprise headed in that direction, or the unaccountable desire to acquire title to public lands which sometimes possesses a community without any apparent reason, or for some other cause, a sudden demand seems to have arisen for timber land in that vicinity by persons desiring to purchase the same under the Timber & Stone Act, and Downs and Snow conceived the idea of engaging in selling the information they then possessed or might thereafter acquire, to such persons. Snow, however, soon returned to Minnesota, and Downs formed a partnership with John I. Wells, a resident of the Basin country. Under the arrangement between them, Wells was to move to Boise City, some forty or fifty miles distant from the land, and there receive applications from persons desiring to enter the same, and send such applicants up to Downs, who was to show them the various tracts, for which they were to charge the applicant a fee of twenty-five dollars, to be divided equally between them. In pursuance of this agreement, about seventy-five applications were made by persons who were shown the lands by Downs and Wells, up to January 1, 1902, about

twenty of whom had tendered their final proof. No final certificates, however, had been issued in any of these cases because, prior to the filing of the applications, a general order of the Land Department suspending the right of the officers of the local land office to issue such certificates on Timber & Stone entries, and requiring the final proof in all such cases to be sent to Washington for examination there, had been issued. As the time for final proof approached, several of the applicants found themselves without means with which to pay for the land, and about the 1st of January, 1902, Wells arranged with William Sweet, a resident of the Basin, to furnish to such of them as might need it, the necessary money with which to make such payments, and from eighteen to twenty of the applicants making final proof after the 1st of January were supplied with money by Sweet through Wells. Soon after agreeing with Wells to furnish this money, Sweet conceived the idea of purchasing and assembling as large a tract of this land as possible in one holding, and for that purpose employed defendant, John Kinkaid, formerly a resident of the Basin, to purchase the lands for him from the applicants, but Kinkaid did not do so because final certificates had not been issued and, as he understood the law, and as it was then interpreted by the Land Department, and generally understood by the profession, it was illegal and unlawful for an applicant under the Timber & Stone Act to sell, or contract to sell, his land prior to the issuance of the final receipt.

In February, 1902, Ex-governor Steunenberg of Idaho became interested with Mr. Sweet in this ven-

ture, purchasing or contracting to purchase, a one-half interest therein, and by the first of March he and Sweet had acquired control of about sixty-four hundred acres, and Steunenberg began to look about for some person or persons with capital sufficient to acquire the title to the lands held by himself and Sweet, purchase other lands in the vicinity, and otherwise handle the enterprise. To that end he submitted the matter to A. B. Campbell of Spokane, but Mr. Campbell, not desiring to engage in the timber business, referred him to A. E. Palmer of that city, who had formerly been in the employ of the Northwestern Lumber Company of Wisconsin, in which the defendants, Barber and Moon, were largely interested and the principal officers, and who had been requested by Mr. Barber to report to him any prospective timber deal which looked promising. On February 21, 1902, Palmer wrote to Barber and Moon at Eau Claire, Wisconsin, advising them of Steunenberg's proposition and recommending its consideration by them. This was the first information either Barber or Moon had concerning the lands in question, or that there were any timber lands in Boise Basin. After several letters and telegrams had passed between Palmer and Barber in reference to the matter, Barber wired for Steunenberg to come to Eau Claire. Steunenberg arrived in Eau Claire on March 6th, and had an interview with Barber and Moon, in which he represented to them that he and Sweet had become interested in some land titles in the Boise Basin in the State of Idaho; that they had purchased or acquired about sixty-four hundred



acres for which they had final receipts, but had taken no deeds because patents had not issued, and that they were holding back part of the purchase money until patents should be issued; that there were from forty-five hundred to five thousand acres more in the same locality for which applications had been made and upon which final proof would soon be made, and he was confident that it could be purchased when it came on the market at not to exceed five dollars an acre, and that enough more land could be secured in the same vicinity by the use of lieu land scrip to make a total of twenty-five thousand acres; that Sweet was not able or willing to finance the matter any further, but would sell out at a profit of fifty per cent, on his present investment, and requested Barber and Moon to buy Sweet out, furnish the money with which to purchase the other claims when they should come on the market, and to buy scrip with which to secure an additional amount of land necessary to make the aggregate of twenty-five thousand acres.

After considerable negotiation between Barber and Moon and Steunenberg, a written contract was finally prepared and signed by Barber and Moon on the 12th of March, 1902, in which it was stipulated and agreed that, in the event they should purchase and acquire the interest of Sweet in the lands in question, and pay him therefor, the amount of his actual investment, together with an additional fifty per cent, Steunenberg could and would procure by good and perfect title and vest in them, within six months from the date thereof, twenty-five thousand

acres of land with at least 200,000,000 feet, board measure, of merchantable pine and fir timber standing and growing thereon, in substantially compact form, along and adjoining Grimes and Moores Creeks, in what is known as Boise Basin, in the southern part of Boise County, Idaho, and so situated as to be valuable for manufacturing into lumber, the total cost thereof not to exceed in the aggregate the sum of \$140,000.00. In consideration of this stipulation on the part of Steunenberg, Barber and Moon agreed that they would pay to Sweet the amount of money actually expended by him in assembling such lands, with fifty per cent, added, and that they would, from time to time and when required, advance the necessary funds to purchase government scrip with which to obtain title to other lands, and to acquire title from persons other than the United States, provided that no funds should be advanced except for actual investment in lands and obtaining title thereto in the name of Barber and Moon. It was further stipulated that when the title should be vested in Barber and Moon to twenty-five thousand acres under the contract, that they might at their option, cause a corporation to be organized under the laws of the State of Wisconsin, with a capital stock equal to the investment made in acquiring title thereto, and cause all such lands to be conveyed to such corporation. But in the event that title to twenty-five thousand acres should not be vested in Barber and Moon within six months from the date of the contract, they were to be at liberty to sell and dispose of all the lands ac-



quired by them in pursuance thereof, after giving Steunenberg six months notice of their intention to do so, and retain out of the moneys so received the whole amount which they might have advanced under the contract. This agreement was not to become effective until Steunenberg's statements and representations about the land and the investment of Sweet therein should be verified by Mr. Palmer, who was to act as the agent and representative of Barber and Moon.

On the day the contract was signed by Barber and Moon at Eau Claire, Mr. Barber left for the south on his vacation, and on the next day Mr. Moon forwarded a copy of the contract, together with a letter of instructions, to Palmer, and requested Palmer to proceed to Boise as soon as convenient to examine into the matter and to close with Steunenberg if he found the conditions as represented.

In pursuance of this understanding and agreement, Palmer went to Boise the last of March or the first of April, and, after an investigation, closed the contract with Steunenberg on the 10th of April, paying him for himself and Sweet about \$40,000.00. This was the first connection that Barber and Moon, or either of them, had with the Basin entries. At that time all of such entries involved in this suit had been made except about eighteen, but no final certificates had been issued because of the order referred to, although that fact was not known by nor communicated to Barber and Moon. There is no evidence whatever in the record that any of the entries were made at the instigation of or in the in-

terest of Barber and Moon, or the Barber Lumber Company, which was subsequently organized by them on the 20th of the following July. None of these entrymen were the agents nor employees of Barber and Moon, nor were Barber and Moon acquainted with them, nor had they ever heard of the land in Boise Basin or its condition until advised by Palmer of Steunenberg's proposition in February, 1902, and their subsequent interview with him about the first of the following March. Forty-nine of the ninety-two entrymen and entrywomen whose applications are involved in this controversy were witnesses in the case. They all testified that their applications were made by them for their own use and benefit, and not under any contract or agreement with Barber and Moon, or the Barber Lumber Company, or any other person, by which the title to the land which they might acquire would inure to their benefit. The order suspending the action of the local land office was vacated in June, 1902, and final certificates began to issue. Immediately thereafter Steunenberg commenced taking deeds from the applicants in order to comply with his contract with Barber and Moon. For that purpose, he employed the defendant, Kinkaid, who in turn engaged the services of defendant, Pritchard, to assist him, Steunenberg agreeing to allow Kinkaid \$800.00 for each claim he could purchase. Upon the delivery of the deeds and final receipts by Kinkaid, Steunenberg paid him the amount due the several applicants, drawing on Barber and Moon therefor. It would seem from this testimony, and

it is undisputed, that the averment of the bill that the entries were made ostensibly in the name of the applicants but in reality for the Barber Lumber Company is wholly unsupported by the testimony.

It is argued on behalf of the Government that, because there is some evidence tending to show that the pecuniary condition and financial ability of many of the applicants and of Downs and Wells, the locators, were such as to render them unable to provide the money necessary to make final proof, there must have been some powerful financial influence back of the movement, and the applications must have been thus induced; and since thereafter the Barber Lumber Company acquired title to the lands, it must be assumed as conclusive, in the absence of evidence as to the supposed interest back of the movement, that it was the promoters of that company. But a patent of the United States for land, regularly issued and signed by the proper officers of the Government, cannot be avoided or set aside on mere conjecture or suspicion. The fraud charged in the bill in a suit for that purpose must be established by clear and convincing proof. In the Maxwell Land Grant Case, 121 U. S. 325, the Supreme Court takes occasion, in view of the importance of the question and the number of cases then coming before the Court, instituted by the Attorney General to set aside patents, to announce with some particularity the rule as to the nature of the testimony and the circumstances which will justify a decree in favor of the complainant in such a suit. It is there said:

“The deliberate action of the tribunals, to which the law commits the determination of all preliminary questions and the control of the progress by which this evidence of title is issued to the grantee, demands that to annul such an instrument and destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the Court, and that the case itself must be within the class of causes for which such instrument may be avoided. . . . We take the general doctrine to be, that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law have been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the efforts to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is

attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

This doctrine has been followed and approved by the Supreme Court in many subsequent cases:

Colorado C. & I. Co. vs. U. S., 123 U. S. 307.

U. S. vs. Budd, 144 U. S. 154.

U. S. vs. Stinson, 197 U. S. 204.

It was therefore not incumbent upon the answering defendant to explain any of the suspicions or inferences as to the influence behind the original movement in the location of the land in the Boise Basin, if there was any improper influence, a fact not deducible from any testimony in this case, except the merest inference. It is just as reasonable and certainly more just to suppose that the entrymen and entrywomen in making the applications to purchase acted, as they each testified, honestly and in good faith, than it is to conjure up some contrary theory, which necessarily assumes that all the witnesses in this case upon that question perjured



themselves on the trial. Patents have been regularly issued for all of these lands, and the defendant has purchased and paid for them at the rate of at least eight hundred dollars per claim, and the burden of proof is on the Government to show that the patents which it has issued were procured by fraud, before such patents can be avoided. Mere inference, conjecture or suspicion is not enough.

The next in order are the Crooked River lands. The acquisition of title in this section of the country was not in contemplation by either Barber or Moon or Steunenberg at the time the contract of March, 1902, was entered into between them. It was supposed at that time that the investment would be confined to the Boise Basin. During the fall and winter of 1901, while Downs and Wells were engaged in locating people in the Basin, Downs learned that there was probably valuable timber land in the Crooked River country, and it was arranged between himself and Wells that he should investigate that country the following spring after the snow had disappeared, which he did, and ascertained that there was a considerable body of valuable timber land in that section. No applications to purchase here were made under the Timber & Stone Act until the last of August, 1902. About that time Barber and Carson, who was interested with him as a stockholder in the Barber Lumber Company, visited Boise to look after their interests in that section, and while there were advised by Steunenberg that there was a large body of land in the Crooked River country which could



be secured by the use of lieu land scrip. Steunenberg was then instructed by them to send an estimator into that country to examine and estimate the timber for the purpose of ascertaining whether it was of sufficient value and in sufficient quantity to justify them in securing title thereto by the use of scrip. About the time of this visit and the instructions to Steunenberg to have the Crooked River country investigated, Downs and Wells, no doubt with knowledge of that fact, began actively locating residents of Boise City and vicinity in that section of the country under the Timber & Stone Act, charging and collecting from each applicant a fee of twenty-five dollars, and from the 27th of August to the 18th of October, seventy-nine claims were so located. About the first of October, Steunenberg employed a man by the name of Taylor, and sent him into the Crooked River country for the purpose of investigating and estimating the quantity of timber, in pursuance of instructions given the previous August by Barber and Carson. Taylor learned from the residents that a large part of the land had already been filed on by applicants under the Timber & Stone Act, and upon his return so reported to Steunenberg. In December, 1902, Steunenberg wired Barber and Moon, at Eau Claire, Wisconsin, that he was going east with important information with reference to the Crooked River lands. Upon his arrival at Eau Claire, he advised them of the situation and that it would not be possible to acquire the land by the use of the scrip because of these applications, and was instructed by

Barber and Moon to have the lands examined, and if the timber was found satisfactory, to purchase them, if he could do so at not to exceed one thousand dollars a claim, after final proofs were made and they came on the market. After these filings were made, the defendant Kinkaid secured control of them and was offering them for sale. Steunenberg, in pursuance of his instructions from Barber and Moon, entered into negotiations with Kinkaid for their purchase and finally succeeded, in February, 1903, in making a contract to take them at a price of nine hundred and fifty dollars for each claim, and Steunenberg drew on the Barber Lumber Company for \$20,000.00, which was the first money furnished by the company for this purpose. Twenty-nine or thirty additional applications were filed in the land office after this date and were subsequently purchased by the company through Steunenberg.

It is charged in the bill, and argued on behalf of the Government, that all of these entries were made by the entrymen ostensibly in the names of the entrymen and entrywomen but in reality for the use and benefit of the Barber Lumber Company, and with the intention on its part to evade the provisions of the Timber & Stone Act. Except the mere inferences to be drawn from the fact that the company was willing and perhaps anxious to obtain lands in that district, and that it did subsequently acquire title to all these lands, there is no evidence to support the averments of the bill. On the contrary, all the testimony negatives any such conclusion. Many of the entrymen and entrywomen were

called as witnesses in this case. Each and every one of them testified unequivocally and directly that the averments of the bill, so far as he or she was concerned, were false and that there was no understanding or agreement by which the title to the land should inure to the benefit of any person other than the applicant, and that he or she had made no agreement directly or indirectly with any person to that effect. Thirty-four of them testified that they did not know at the time of their filing of any market for the lands; some of the others said that they had been told that the land could be sold, but that they did not know who the purchaser was to be.

Now, in the face of this testimony, which stands here on the record uncontradicted, the Court would not be justified in finding the allegations of the bill to be true. It is to my mind more reasonable to suppose that Downs and Wells, and perhaps Kin-kaid, having learned or suspected that the Barber Lumber Company, was contemplating acquiring title to the land by the use of scrip, conceived the idea of frustrating this plan and earning some money for themselves from persons desiring to purchase land under the Timber & Stone Act, than to suppose the applications were made in pursuance of an unlawful and corrupt agreement between the applicants and the defendants.

#### 6-4 Lands.

The plat of the 6-4 lands was not filed in the local Land Office until July 15, 1903. Sometime previous to that date, the defendant Moon visited Idaho to examine the property owned by his company with a

view of determining whether it was sufficient to justify the putting in of a manufacturing plant. While there he noticed some of the timber on what subsequently became Township 6-4, and directed Mr. Connor, an estimator in the service of the company, to examine the land and to estimate the amount of timber thereon with a view of using lieu land scrip if the timber was of sufficient value. A few days before the plat of the land was filed in the Land Office, Barber telegraphed Steunenberg not to neglect 6-4. That state, however, had sixty days after the plat was filed in which to exercise its right to select land in such township, and until its rights were exercised or waived no other entries or selections could be made. Pending the matter, the attorney for the Barber Lumber Company called at the Executive Office in Boise to ascertain whether the State intended to exercise its right of selection, and was informed by the Governor that it did. He thereupon suggested to the Governor that the State waive its right or, if not, reduce the quantity of land which it contemplated taking. During all of this time, the evidence showed that Steunenberg, as the representative of the Barber Lumber Company, was making preparation to file lieu land scrip then owned by the company on land within this township. For that purpose, he employed an attorney to prepare the necessary papers, but, as this scrip was in the name of Mr. Moon, some delay and difficulty was encountered in obtaining the necessary power of attorney from him. In the meantime, and before the land became open to entry, and before

the scrip could be used, Downs hired Kinkaid to ascertain from the State Land Office the description of the lands which the State proposed to select, and Kinkaid did so a few days before the land was open to entry. As soon as Downs secured the information, he immediately took a large number of persons who had applied to him to secure land under the Timber & Stone Act, into the township, and they selected all of the valuable land therein which had not been previously selected by the State, and each of the applicants paid Downs twenty-five dollars for his services and the information. In order that there might be no confusion or mistake in the applications, as it was important that they should be correct in order to frustrate the purpose of the Barber Lumber Company to take the land with lieu land scrip, Downs advised intending applicants to secure the services of Kinkaid in preparing the papers, which most of them did, and on Saturday, before the opening of the township on Monday, these applicants began to assemble at the local Land Office and remained there in line until the opening of the office Monday morning, when there were thirty persons in line, and their applications were duly received and filed. Some of these persons were advised to enter the land by Kinkaid and some by Downs, but many of them acted upon their own initiative. Twenty of the entrymen testified as witnesses in this case and each and every one of them swore positively and unequivocally that the entry was made for his own use and benefit and not that of anyone else; that all of them paid a location fee



of twenty-five dollars, and, in addition, the expenses of visiting and examining the land, the Land Office fees and all of the other expenses in the matter, and that all but two or three paid for the lands from their own funds, and they borrowed the money from Kinkaid. There is no evidence that this money was furnished by or was the property of the Barber Lumber Company, but, if it had been, it would not invalidate the entries unless they were made originally for the Barber Lumber Company, or under a contract or agreement, express or implied, between it and the entrymen or entrywomen, that the title acquired should inure to the benefit of the company. There would have been no illegality nor fraud in the entrymen or entrywomen subsequently contracting to sell the land to the company prior to the issuance of patent, and the company advancing the necessary money with which to make final proof to enable the entrymen and entrywomen to comply with such contract. It is probably true that some of the applicants for these 6-4 lands knew that the Barber Lumber Company was or had been buying lands in that vicinity and it may be that they expected that they would be able to sell their land to such company in case they should later conclude to dispose of it. But there is no testimony showing that there was any such agreement or arrangement prior to the time the applications were made. Indeed, it would be passing strange that the Barber Lumber Company should make such an arrangement or agreement, for, at that time, it was the owner of at least six thousand acres of lieu land



scrip costing it \$5.35 an acre which it could have used and obtained title to the land in a lawful and legal way. It is incredible therefore, to believe that it would resort to a fraudulent or unlawful scheme of acquiring title through dummy applications at a cost and expense to itself greater than it would have cost it to have acquired the lands by the use of scrip in a legal and lawful manner.

Some stress is laid by the complainant on the fact that, prior to the time this land became open to purchase, the attorney for the defendant manifested some solicitude that the State should waive its right to make selection in the township, and from that fact the inference is sought to be drawn that there was some corrupt and unlawful understanding on the part of the company to acquire this property in an unlawful manner, through dummy applications, but the inference is not justified by the facts. It is far more probable that the purpose of the company was to acquire title to the land by the use of lieu land scrip than to suppose that it intended to resort to the unlawful and hazardous means of securing it in the manner suggested.

Reliance is also had upon the statement of the witness Hoseley that a few days prior to the date the land became open to entry, Mr. Barber gave him at Eau Claire, Wisconsin, a book purporting to contain a record of the holdings of the Barber Company in Idaho, and in which book the lands subsequently acquired by the company in 6-4 were noted. Hoseley was employed by the Barber Company about the middle of September, 1903, to go to Idaho

and take charge of its logging operations. He testifies that before he left Wisconsin, Mr. Barber gave him a book containing a record of the holdings of the company in Idaho. Upon the trial of this suit, he said that the checkmarks in the book in Township 6-4 were not in it at the time it was given to him by Mr. Barber in Wisconsin, and there is other testimony showing that the statement is true. It seems, however, that on some previous occasion, either in a statement to some government official, or as a witness on some previous trial, Hoseley stated that the book, as then produced, and which contained the entry of the 6-4 lands belonging to the Barber Company, was in the same condition as it was in when it was delivered to him by Mr. Barber in September, 1903, and before there were any entries whatever in this township. Hoseley as a witness in this case explains, or attempts to explain, the previous statement in reference to this matter and gives an apparently reasonable explanation thereof. But, whether this explanation is to be regarded as satisfactory or not, the previous statements made by him are not testimony in this case. They were competent only, if at all, for the purpose of impeachment, and not as substantive evidence.

Again attention is called to a letter from Mr. Barber to George S. Long, dated November 13, 1903, in which he asks Long's permission to have deeds for lands which the Barber Lumber Company was about to acquire put in Long's name. This was before final proof had been made in the 6-4 entries. After such proof and the purchase of these entries

by the Barber Company, title was in fact taken in the name of Long, and it is argued that the letter to him was evidence of a previous agreement with the entrymen, but the fact, if it is a fact, that the Barber Company made an arrangement with Long before the final proof in these entries had been made, and if this be taken as evidence of an existing agreement had at that time between the company and some of the entrymen by which the company was to purchase the land after final proof, it is no evidence tending to support the averments of the bill, and is not proof of fraud.

One who has located a tract of land under the Timber & Stone Act is at liberty to sell his title as freely as he may sell any other property he has lawfully acquired;

“The Act does not,” says the Supreme Court in *U. S. vs. Budd*, 144 U. S. 154, “in any respect limit the dominion which the purchaser has over the land after its purchase from the government, or restrict in the slightest his power of alienation. All that it denounces is a prior agreement, the acting for another in the purchase. If when the title passes from the government no one save the purchaser has any claim upon it, or any contract or agreement for it, the act is satisfied. *Montgomery*” (the purchaser) “might rightfully go or send into that vicinity and make known generally, or to individuals a willingness to buy timber land at a price in excess of that which it would cost to obtain it from the government; and any person knowing of that offer might rightfully go to the land office and make application

and purchase a timber tract from the government.”

Indeed, under later decisions, an applicant for the purchase of timber lands has a right, after he has made his initial application, and before final proof, to contract to sell the title thereafter to be acquired, and the intending purchaser may lawfully advance to him the money with which to make final proof, in order that he may comply with his contract.

Williamson vs. U. S., 207 U. S. 425.

U. S. vs. Bigs, 29 Supreme Court Rep. 181.

It therefore seems lawful, under the Timber & Stone Act: (1) One desiring to acquire title to timber land may make known his willingness to buy the same at an advance over the government price. (2) Another person knowing of that fact may make entry with the expectation of selling to such intending purchaser. (3) The entrymen may, at any time after his application, sell or contract to sell to the other. (4) The transaction is not denounced by the Statute, or illegal or unlawful, if there has been nothing further in the way of communication or contract or agreement between the parties than as here stated. Now, the evidence in this case does not show as intimate connection between the entrymen and the defendant company as the Courts have thus approved. There is no evidence that the Barber Company, or anyone representing or acting for it, ever at any time signified a willingness or desire to purchase lands in either the Crooked River, or the 6-4 districts, at an advance over the Government price, or at all, except by the use of lieu land scrip. Nor is there any tes-

timony that any of the applicants intended or expected at the time their initial applications were filed to sell or dispose of their lands to the Barber Lumber Company. It is, I think, probable that there was a general understanding among the entrymen and entrywomen, not put into words perhaps, but, nevertheless, existing, that they would take the land and it would subsequently be assembled into one large body and sold at a uniform price to some subsequent purchaser, but there is no evidence that they had any particular purchaser in view, nor that the Barber Lumber Company was regarded as the probable purchaser, nor that it had any intention of acquiring title to the lands by means of applications under the Timber & Stone Act, nor that any of these entries were made by its procurement or solicitation, nor under any contract or agreement with it, express or implied.

In this case, the Government grounds its right to recovery upon the averment that the entrymen and entrywomen did not make application for the land in good faith for their own use and benefit but on the contrary entered such land for the benefit and under an agreement with the answering defendant. All, or substantially all, of the entrymen and entrywomen were residents of the State of Idaho, and most of them of the city of Boise. One hundred and thirty of them were called as witnesses, and each and every one of them testified that the averments of the complaint and the charges made by the Government therein are untrue, as far as he or she was concerned. Messrs. Barber and Moon, the pro-



moters and organizers of the Barber Lumber Company, and through whose efforts the land was purchased, testified to the same effect, and that neither Wells, Downs, Kinkaid, nor any of the other defendants or entrymen or entrywomen, were the agents or employees of the company, or represented it in any of the transactions referred to in this case. Wells and Downs, who showed the applicants the lands located upon by each of them, both testified that they had no understanding or agreement whatever, with the applicants as to what should be done with the land; and that they had no interest in the matter except to obtain the location fees; that they were not employed by nor in the service of Barber and Moon, or the Barber Lumber Company, or any of their agents or employees, but were acting for themselves alone, and such was the testimony of Kinkaid and Pritchard as to their connection with the matter. All of this evidence stands uncontradicted except by mere inference or conjecture.

It is insisted that the entrymen and entrywomen who have testified in this case, although called as witnesses by the Government, were hostile to it, and that their testimony should therefore be disregarded or viewed with suspicion, but there was no particular hostility manifested by any of these witnesses, unless it is due to the fact that their testimony does not support the averments of the bill. The Government, was, of course, not concluded by their testimony, but it cannot insist that they are unworthy of belief or that their testimony should be entirely disregarded and that the facts found by



the Court to be contrary to what these people have testified to, without some evidence upon which to base such a conclusion. The testimony was competent and, unless self-contradictory or inherently improbable, it must necessarily prevail in the absence of contravailing evidence.

Dravo vs. Fabel, 25 Fed. 116.

Dravo vs. Fabel, 132 U. S. 487.

U. S. vs. Clark, 125 Fed. 774.

U. S. vs. Clark, 138 Fed. 294.

There are some matters connected with the acquisition of title to some of the lands and the payment therefor which are calculated to arouse suspicion as to the good faith of the transaction, but they are not sufficient to overcome the positive testimony in the case, and could probably have been explained but for the untimely assassination of Ex-Gov. Steunenbergh.

It is argued on the facts, as disclosed by the evidence, that the plaintiff is entitled to relief because the contract of March, 1902, between Barber and Moon and Steunenbergh, contemplates the use by them of the Timber and Stone Act to acquire title to a larger area of the public lands, not then filed upon, than the parties to the contract were entitled to take in their own right. That it is a fraud upon the Government for an individual or an association of individuals to undertake to acquire a larger area of public land under the act referred to than such a party or association are entitled to in their own right may be conceded.

U. S. vs. Trinidad Coal Co., 173 U. S. 160.

U. S. vs. Keipel, 211 U. S. 370.

But neither the contract nor the evidence in this case discloses such a scheme on the part of Barber or Moon or Steunenberg; on the contrary, the language of the contract, the subsequent correspondence between the parties, and the testimony of all of them, as well as their conduct, show that the intention was to acquire title by lieu land scrip to a sufficient area, with that already filed on, to make an aggregate of 25,000 acres, and not to use the Timber and Stone Act for that purpose.

A large volume of correspondence of the defendant company and Barber and Moon concerning the matters involved in this suit has been read into the record. It is suggested, on behalf of the Government, that this correspondence is probably a fabrication, and is unworthy of credit, because, in one of Steunenberg's letters, dated February 3, 1902, reference is made to a certain Mr. Tipton "present Assistant U. S. Attorney," while in fact it is said Mr. Tipton was not appointed to that office until August, 1908, but this fact, standing alone and without any explanation whatever, is insufficient to discredit all the rest of the correspondence which was taken from the files of the defendant company and appears to have been had in the usual course of its business. It would have been quite impossible to have fabricated all of this correspondence, and, certainly, if any one had done so, he would not have made the mistake occurring in Steunenberg's letter.

In reaching a conclusion in this case, I have not

overlooked the testimony concerning what is known as the Wells and Granger and Anderson group of entries made in the Boise Basin in September, 1907, nor the influence from high sources said to be brought by defendants or some of their agents, to bear upon the special agents detailed by the Department to investigate these entries. None of them are involved in this suit. They were cancelled by the Department and never passed to patent. The evidence in relation thereto, therefore, has but little, if any, bearing upon the question of whether the particular entries mentioned in the bill of complaint were made in the manner and for the purpose therein alleged, and that is the sole question to be determined in this case.

Upon the whole record, my conclusion is that the averments of the bill are not sustained and that it should be dismissed. Let a decree be entered accordingly.

[Endorsed]: Filed Sept. 7, 1909. A. L. Richardson, Clerk.

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*In the Circuit Court of the United States, Central  
Division, District of Idaho.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE BARBER LUMBER CO et al.,

Defendants.

**Decree.**

This case having been heretofore submitted for decision upon the pleadings, evidence and proof, and

now being fully advised in the premises, the Court finds that the allegations in the Bill of Complaint are not sustained by the testimony and there are no equities therein. It is therefore ordered, adjudged and decreed that the Bill of Complaint be and the same is hereby dismissed.

(Signed) R. S. BEAN,  
Judge.

[Endorsed]: Filed Sept. 7, 1909. A. L. Richardson, Clerk.

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*In the Circuit Court of the United States for the  
District of Idaho, Central Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

THE BARBER LUMBER COMPANY (a Corporation) et al.,  
Defendants.

**Petition for Appeal.**

To the Judges of the Circuit Court of the United States, for the District of Idaho:

Your petitioner, the United States of America, the complainant in the above-entitled cause, lately depending in the court above named, respectfully represents and shows that in the said cause there was entered at the March term of said court, in the year 1909, a final decree greatly to the prejudice and injury of your said petitioner, by which said decree the bill of complaint filed by your said petitioner as

complainant in the said cause was dismissed, and which said decree is erroneous and inequitable in many particulars, some of which are specified and assigned as errors by your said petitioner in an assignment of errors lately filed by your said petitioner in the said cause, in the office of the Clerk of said Court.

Wherefore, to the end that your said petitioner may obtain relief in the premises and have opportunity to show the said errors complained of, and that the said errors may be corrected, and the said decree reversed, your said petitioner prays that it may be allowed in the said cause an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and that proper orders to the allowance of such an appeal may be made by this Court.

GEO. W. WICKERSHAM,

Attorney General of the United States.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitors for Complainant.

[Endorsed]: Filed October 30, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the  
District of Idaho, Central Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY (a Corporation) et al.,

Defendants.

**Assignment of Errors.**

Now comes the United States of America, the complainant in the above-entitled cause, and, with a view to the obtaining and the prosecution of an appeal from the decree lately entered in the said cause in the court above named, files this the said complainant's assignment of errors in the said decree as stating and designating the errors in the said decree upon which the said complainant intends to reply in such prosecution of the said appeal.

And the said complainant assigns for such errors and says that the said United States Circuit Court in rendering and entering the said decree erred in these matters and things, that is to say:

I. That the said Court erred in dismissing the bill of complaint filed by the said complainant in the said cause.

II. That the said Court erred in not granting by decree appropriate to that end the relief prayed by the said complainant in the bill of complaint filed by the said complainant in the said cause.



III. That the said Court erred in failing to find from the evidence in the said cause that the defendants named in the said bill of complaint had conspired among themselves, with each other and with divers other persons named and indicated in the evidence, to defraud the United States in the manner and for the purposes stated and charged in the said bill of complaint, and that the said defendants did so defraud the United States in such manner and in respect of the lands of the United States designated and described in the said bill.

IV. That the said Court erred in finding and in holding that the titles to the lands designated and described in the said bill of complaint were obtained from the United States in accordance with law and without fraud, and that the said titles are valid in the hands of the defendant, the Barber Lumber Company.

V. That the said Court erred in holding that the complainant was entitled to relief only upon proof of the particular averments made in the bill of complaint, and that relief could not be granted to the said complainant upon evidence making out a case which, under other circumstances, that is to say, upon other averments, would entitle the complainant to the aid of the Court.

VI. That the said Court erred in holding that it was not incumbent upon the defendants to account for and to explain the manner in which the lands in suit were obtained, or to rebut the presumptions arising upon and the inferences flowing from the facts and the circumstances of suspicion established

by the complainant's proof, and in not holding that it was incumbent upon the said defendants to explain and account for such facts and circumstances, the proof made by the complainant having established prima facie the averments of fraudulent and illegal acquisition of the said lands by the said defendants.

VII. That the said Court erred in finding that the defendants purchased the lands designated in the bill under such circumstances as constituted the said defendants innocent purchasers of the said land in good faith, for value and without knowledge or notice of any fraud, illegality or other defects in the titles to the said lands.

VIII. That the said Court erred in holding that, in the circumstances and upon the facts established by the evidence herein, the defendants were innocent purchasers of the said lands in good faith, for value, and without notice of fraud, illegality or other defects in the titles to the said lands.

IX. That the said Court erred in not finding that a certain alleged letter offered in evidence by the defendants, bearing date of February 3, 1902, and represented to have been written on February 3, 1903, by Frank Steunenberg, in which letter one Tipton is described as being Assistant United States Attorney, the said letter appearing on page 4009 of the original transcript of testimony herein, was and is forged, fabricated and not a genuine letter of the character, date and authorship by it purported.

X. That the said Court erred in failing to find that the tracts of land designated in the bill of com-

plaint were severally entered by the several persons respectively making entry thereof under and in pursuance of unlawful agreements, contracts, arrangements and understandings theretofore, and prior to the several dates of the said entries, made and entered into by and between the said several persons so making entries of the said lands and the defendants, or some of the said defendants, whereby and in virtue of which said unlawful agreements, contracts, arrangements and understandings, the said entries were made in the interest and for the benefit of the said defendants, or some of them, and the lands so entered were agreed, bargained and arranged to be conveyed to the said defendants, or to some of them, all in the manner stated and charged in the bill of complaint.

XI. That the said Court erred in finding and holding that the allegations in the said bill of complaint are not sustained by the testimony and evidence in said cause, and that there are no equities therein.

XII. That the said Court erred in failing to find that it was, at the inception of the transactions, shown by the evidence herein and throughout the said transactions, the purpose and intention of the defendants Barber and Moon, and afterwards of the said defendants and of the other defendants concerned in the said transactions, to acquire the lands by them proposed to be acquired and actually acquired from the United States, under and through the provisions of the Act of Congress of the United States, entitled, "An Act for the sale of timber

lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended to all public land States by Act of Congress of August 4, 1892; and by means of entries to be made severally by divers and numerous other persons under and in professed and pretended accordance with the provisions of the said statute; and in finding that it was the purpose, expectation and endeavor of the said defendants to acquire the said land by the location of scrip.

XIII. That the said Court erred in failing to hold upon a finding of facts appropriate thereto and properly to be made upon the evidence herein, that the titles acquired by the defendants to the lands involved herein were acquired in fraud of the United States and of the laws of the United States, and were and are invalid and voidable at the suit of the United States, in this and for this reason, namely, that the said defendants intended to acquire and did in fact acquire the said lands under, through, and in pretended accordance with, the statutes of the United States relating to such matters, and in quantities and to an aggregate area greatly in excess of the quantities and areas which the said defendants, or any or all of them, were entitled to acquire under and in virtue of the said statutes.

XIV. That the said Court erred in not finding that the certain alleged letters following, the same being documents offered in evidence by the defendants, were and are forged, fabricated and not genuine letters of the character, date and authorship by the same purported, that is to say:

1. An alleged letter, dated December 29, 1902, purporting to be written by defendant James T. Barber, and appearing on page 4000 of the original transcript of the testimony herein;

2. And alleged letter, dated January 6, 1903, purporting to have been written by defendant James T. Barber, and appearing on page 4000 of the original transcript of the testimony herein.

XV. That the said Court erred in failing to hold, upon a finding of facts appropriate thereto and proper to be made upon the evidence herein, that the titles acquired by the defendants to the lands herein involved were acquired in fraud of the United States and in fraud of the laws of the United States, and were and are invalid and voidable at the suit of the United States, in this and for this reason, namely, that the said titles were acquired by the said defendants through and by means of entries made under and in professed accordance with the laws of the United States, which entries were by the said defendants caused and procured to be made by means of solicitation, by offers and assurances of advantage to the several persons making such entries, and other means and methods of procurement, employed by the said defendants for the purpose of causing such entries to be made in greater number than otherwise and without such procurement entries would be made, and with the intent and to the end that thereby a greater number of such entries should be made and a larger area of public land should be



5718            *The United States of America*

rendered subject to be acquired by the said defendants.

GEO. W. WICKERSHAM,  
Attorney General of the United States.

PEYTON GORDON,  
Special Assistant to the Attorney General,  
Solicitors for Complainant.

[Endorsed]: Filed Oct. 30, 1909. A. L. Richardson, Clerk.

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*In the Circuit Court of the United States for the  
District of Idaho, Central Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

THE BARBER LUMBER COMPANY (a Corporation), et al.,

Defendants.

**Order Allowing Appeal.**

This day came The United States of America, the complainant in the above-entitled cause, and presented its petition for an appeal and an assignment of errors accompanying the same, which petition, upon consideration of the Court, is hereby allowed, and the Court allows an appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

FRANK S. DIETRICH,

Judge,

Pursuant to request of Judge Bean, who is absent  
from the District.

Oct. 30, 1909.



[Endorsed]: Filed October 30, 1909. A. L. Richardson, Clerk.

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*In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation), JAMES T. BARBER, SUMNER G. MOON, WILLIAM SWEET, JOHN KINKAID, LOUIS M. PRITCHARD, PATRICK H. DOWNS, ALBERT E. PALMER, and HORACE S. RAND,

Defendants.

**Praecipe for Transcript.**

To the Clerk of the Above-entitled Court:

You will please, at once, prepare transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals at San Francisco, California, under the appeal heretofore perfected in said Court, and include in said transcript all pleadings, proceedings and papers on file in said cause.

Dated October 31st, 1909.

PEYTON GORDON,  
Solicitor for Complainant and Appellant.

[Endorsed]: Filed Oct. 31, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the  
District of Idaho, Central Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY (a Corporation), et al.,

Defendants.

**Order Permitting Withdrawal of Exhibits.**

It is hereby ordered, that the following Original Exhibits, to wit:

10g, 17g, 19g, 26s, 31m, 33s, 59k, 68j, 69h, 77h, 92h, 94l, 96h 112h, 115j, 136n, 141a, 143a, to l, inclusive, and 143n and o; 143aa, to and including 143oo; 167, 189, 193, 198, 219, 229, 234, 236, 237, 244, 245, 248, 250, 262, 263, 264, 265, 267, 272, 285, 289, 297, 298, 302, and 306; Henry Humphrey No. 1, Frank Martin No. 1, Northern Pacific Ry. Land Lists Nos. 1 and 2; Check of Frank Steunenberg, dated July 6, 1904, for \$100.00, offered in evidence at the trial of this cause, be allowed to be withdrawn from the files of this court, for the purpose of being transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal to the said United States Circuit Court of appeals, in this cause, to be

returned to the Clerk of this Court, upon the termination of said appeal.

Dated at Boise, Idaho, July 14, 1910.

FRANK S. DIETRICH,  
Judge.

[Endorsed]: Filed July 14, 1910. A. L. Richardson, Clerk.

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**Citation on Appeal.**

THE UNITED STATES OF AMERICA—ss.

The President of the United States of America to Barber Lumber Company, a Corporation, and to C. H. Bundy and Alfred A. Fraser, Its Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the District of Idaho, Central Division, wherein the United States of America is complainant and appellant and the Barber Lumber Company, a corporation, is defendant and appellee, to show cause, if any there be, why the decree rendered against the said complainant and appellant, as in said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the

United States of America, this 19th day of February, A. D. 1910, and of the Independence of the United States the one hundred and thirty-fourth.

FRANK S. DIETRICH,

United States District Judge, presiding in the Circuit Court.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

Service of the within citation and receipt of a copy thereof admitted this 19th day of February, A. D. 1910.

ALFRED A. FRASER,

Solicitor for Barber Lumber Company, a Corporation, Appellee and Respondent in Lower Court.

I hereby certify that I received the within citation on February 19, 1910, and served the same as to the defendant and appellee, the Barber Lumber Company, a corporation, by delivering to and leaving with Alfred A. Fraser, its solicitor of record, a true copy of the within writ and citation on February 19, 1910, at Boise, Idaho.

S. L. HODGIN,

U. S. Marshal.

By E. W. Beemer,

Deputy.

Boise, Idaho, February 19, 1910.

[Endorsed]: (Original.) No. 47. In the Circuit Court of the United States, Ninth Judicial Circuit, for the District of Idaho, Central Division. The United States of America, Complainant and Appellant, vs. Barber Lumber Company, a Corporation, Defendant and Appellee. Citation on Appeal. Filed

on Return February 23, 1910. A. L. Richardson,  
Clerk.

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**Return to Record.**

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]                      Attest: A. L. RICHARDSON,  
Clerk.

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*In the Circuit Court of the United States, District  
of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,  
Appellant,

vs.

BARBER LUMBER COMPANY (a Corporation),  
JAMES T. BARBER, SUMNER G. MOON,  
WILLIAM SWEET, JOHN KINKAID,  
LOUIS M. PRITCHARD, PATRICK H.  
DOWNS, ALBERT E. PALMER and  
HORACE S. RAND,

Respondents.

**Clerk's Certificate to Record.**

I, A. L. Richardson, Clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 5228, inclusive, to be full, true and correct copies of the pleadings and proceedings

in the above-entitled cause, the copies of exhibits being included therein in accordance with a stipulation, between the parties, on file in said cause, and that the same together constitute a true, complete and correct transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said court this 16th day of July, 1910.

[Seal]

A. L. RICHARDSON,  
Clerk.

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[Endorsed]: No. 1883. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America (Complainant), Appellant, vs. The Barber Lumber Company (a Corporation), (Defendant), Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Idaho, Central Division.

Filed July 19, 1910.

F. D. MONCKTON,  
Clerk.

By Meredith Sawyer,  
Deputy Clerk.



**Stipulation [for Omission of Certain Original Exhibits from Printed Transcript of Record].**

*United States Circuit Court of Appeals for the Ninth Circuit.,*

THE UNITED STATES OF AMERICA (Complainant),

Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),

Appellee.

It is hereby stipulated between counsel for the appellant and appellee in the above-entitled cause that the exhibits named in the order of the United States Circuit Court, District of Idaho, dated Boise, Idaho, July 14th, 1910, a copy of which is hereto attached, may be omitted from the printed transcript of record on appeal herein, the originals of said exhibits being forwarded to the Clerk of the Circuit Court of Appeals by the Clerk of said United States Circuit Court in accordance with said order.

Dated Aug. 25/10.

PEYTON GORDON and  
A. B. JACKSON,  
Counsel for Appellant.  
C. T. BUNDY,  
Counsel for Appellee.

*In the Circuit Court of the United States for the  
District of Idaho, Central Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER CO (a Corporation), et  
al.,

Defendants.

**Order Transmitting Original Exhibits, etc.**

It is hereby ordered that the following Original Exhibits, to wit:

10g, 17g, 19g, 26s, 31m, 33s, 59k, 68j, 69h, 77h, 92h, 94L, 96h, 112h, 115j, 136n, 141a, and 143a, inclusive, and 143n and o; 143aa, to and including 143oo; 167, 189, 193, 198, 219, 229, 234, 236, 237, 244, 245, 248, 250, 262, 263, 264, 265, 267, 272, 285, 289; 297, 298, 302, and 306; Henry Humphreys No. 1, Frank Martin No. 1, Northern Pacific Ry. Land Lists Nos. 1 and 2; Check of Frank Steunenbergh, dated July 6, 1904, for \$100.00, offered in evidence at the trial of this cause, be allowed to be withdrawn from the files of this court, for the purpose of being transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal to the said United States Circuit Court of Appeals, in this cause, to be returned to the clerk of this court, upon the termination of said appeal.

Dated at Boise, Idaho, July 14, 1910.

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Judge.

[Endorsed]: No. 1883. United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Barber Lumber Company, etc. Stipulation for Omission of Certain Original Exhibits from Printed Transcript of Record. Filed Sep. 2, 1910. F. D. Monckton, Clerk.